

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - -

DEARREA KING, Adm., of the)
ESTATE OF TYREE KING,) CASE NO. 2:18CV1060
Plaintiff,) JUDGE EDMUND A. SARGUS, JR
-V-) CHIEF MAG. JUDGE ELIZABETH
THE CITY OF COLUMBUS, et al,) P. DEAVERS
Defendant.)

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CHRISTOPHER M. COOPER, Adm.,)
Of the ESTATE OF DEAUNTE) CASE NO. 2:19CV3105
BELL-McGREW,)
Plaintiff,) JUDGE GEORGE C. SMITH
-V-) CHIEF MAG. JUDGE ELIZABETH
THE CITY OF COLUMBUS, et al,) P. DEAVERS
Defendant.)

- - - oOo - - -

JAMES J. ENGLAND,) CASE NO. 2:19CV1049
Plaintiff,) JUDGE SARAH D. MORRIS
-V-) MAGISTRATE JUDGE KIMBERLY
THE CITY OF COLUMBUS, et al,) A. JOLSON
Defendant.)



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The video teleconference deposition of DEPUTY CHIEF KENNETH KUEBLER, a witness herein, being called by the Plaintiffs as if upon cross-examination under the statute, and taken before Megan A. Medved, a Notary Public within and for the State of Ohio, pursuant to the agreement of counsel, on Monday, November 23rd, 2020, at 10:00 a.m., at the Offices of Tackla Court Reporting, LLC, 1020 Ohio Savings Plaza, 1801 East 9th Street, City of Cleveland, County of Cuyahoga, and the State of Ohio.

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1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 DEPUTY CHIEF KENNETH KUEBLER, of lawful age, a
4 witness herein, having been first duly sworn, as
5 hereinafter certified, deposes and says as follows:

6 - - - -

7 CROSS-EXAMINATION OF DEPUTY CHIEF KENNETH KUEBLER

8 BY MS. GELSOMINO:

9 **Q. Can you please state your full name for the**
10 **record?**

11 A. Kenneth Kuebler. Last name is spelled K-U-E-B,
12 as in boy, L-E-R.

13 **Q. And what is your title within the police**
14 **department?**

15 A. I'm a Deputy Chief of Police over The Special
16 Operations Subdivision.

17 **Q. Kuebler, right?**

18 A. Like the cookies. That's correct.

19 **Q. I'll do my best on that. My name is Sarah**
20 **Gelsomino. I'm one of the lawyers that represents the**
21 **Plaintiffs in the three cases that we're here today to**
22 **take your testimony in. My partner Jacqueline Greene is**
23 **also here with us. Before we start just some general**
24 **stuff. Have you done a deposition by Zoom before?**

25 A. I have.

1 Q. Okay. And I know you've sat for many
2 depositions in your life before, right?

3 A. Yes.

4 Q. Okay. So just a reminder, especially on Zoom,
5 sometimes it's hard, we end up talking over each other,
6 so let's just be conscious of that so Megan can do her
7 best to make a clean transcript. She can't write down
8 nods of the head, et cetera. If you don't understand
9 something that I say particularly because sometimes the
10 audio can come in and out over Zoom, please ask me to
11 rephrase or tell me that you didn't understand it. If
12 you answer I'm going to assume that you understood my
13 question. Is that fair?

14 A. Sure.

15 Q. And you understand that you are here today to
16 tell the truth, right?

17 A. Yes.

18 Q. You took an oath today to tell the truth?

19 A. Yes.

20 Q. And can I rely upon you today to testify
21 accurately and truthfully?

22 A. Yes.

23 Q. Is anything going on today, are you on any
24 medications or having any other personal issues that
25 would impact your ability to testify accurately and

1 truthfully today?

2 A. No.

3 Q. Okay. You understand that you have been named
4 as what we call a 30(b)6 representative for the city.
5 Do you understand that?

6 A. No.

7 Q. Okay. Do you understand that you're here in
8 your official capacity to give binding testimony for the
9 City of Columbus?

10 A. Yes.

11 Q. So you are what we call -- you have some
12 information, some personal knowledge about some of the
13 cases that you're here to testify about today?

14 A. I suppose.

15 Q. But above and beyond, that you're also going to
16 testify as the official designee for the City of
17 Columbus to give that binding testimony for them, right?

18 A. Yes.

19 Q. Okay. So I'm going to show you the Deposition
20 Notice in this case.

21 MS. GELSOMINO: Let's go off the
22 record.

23 - - - -

24 (Thereupon, an off-the-record discussion was held.)

25 - - - -

1 MS. GELSOMINO: Let's go back on the
2 record then. So, Wes, for the record, he's going to be
3 testifying today in all three cases about 7.)A, right?

4 MR. PHILLIPS: Correct.

5 BY MS. GELSOMINO:

6 Q. So you're here to testify on all investigations,
7 reviews, findings and outcomes from 2005 to present for
8 all deadly force events involving CPD members concerning
9 the firearms police involved death review board. Is
10 that your understanding?

11 A. I was subpoenaed to be here to testify. I
12 didn't know what it was for, but I could do that.

13 Q. Okay. What did you do to prepare for the
14 deposition today?

15 A. I had a ten minute web conversation with
16 Mr. Phillips on Thursday or Friday last week.

17 Q. Late last week?

18 A. Late last week, yeah.

19 Q. That's close enough. Did do you anything else
20 to prepare for this deposition?

21 A. Yes.

22 Q. What?

23 A. I reviewed two routing sheets.

24 Q. Which routing sheets are those?

25 A. I believe it was Tyree King's routing sheet, and

1 one other. I believe -- I don't remember the name of
2 which cases they are. It was the one involving the pit
3 bulls and the officer fired at the pit bulls.

4 **Q. England?**

5 A. Yeah.

6 **Q. Did you look at anything regarding the shooting**
7 **of Deaunte Bell-McGrew?**

8 A. No.

9 **Q. Did you look at anything else regarding the**
10 **shooting of Tyree King?**

11 A. No.

12 **Q. Did you look at anything else regarding the**
13 **shooting of Mr. England?**

14 A. No.

15 **Q. Did you look at any documents at all in**
16 **preparation for today's deposition?**

17 A. No.

18 **Q. Okay. Do you understand that as a designated**
19 **witness to give binding testimony on behalf of the City**
20 **of Columbus you have a responsibility to identify all**
21 **sources of information and gather all of the necessary**
22 **information to testify?**

23 MR. PHILLIPS: Objection. You can go
24 ahead and answer.

25 A. I don't understand that.

1 BY MS. GELSOMINO:

2 Q. You have access to all of the information
3 regarding the firearms police involved death review
4 board since 2005?

5 A. Yes, I have access.

6 Q. Where is that held?

7 A. The majority of it is online.

8 Q. Where?

9 A. On our division's intranet. Much of it is on
10 the Internet.

11 Q. Much of it is like publicly available on the
12 Internet, is that what you mean?

13 A. Yes.

14 Q. Okay. What are you thinking about that's
15 publicly available on the Internet?

16 A. The division's directives.

17 Q. Okay. What else?

18 A. That's it, I believe.

19 Q. Okay. What do you have access to on the
20 intranet?

21 A. Those same files. The firearm death review
22 board's SOPs.

23 Q. Okay. Anything in addition to the SOPs?

24 A. Relating to this case, I don't think.

25 Q. What do you mean "relating to this case"?

1 A. There's lots of information on the intranet.

2 Q. Yeah. I'm asking what information is available
3 to you on the intranet regarding the firearm police
4 involved death review board?

5 A. The SOP, I believe. That would be it.

6 Q. What about the investigations and reviews and
7 findings of that board?

8 A. No. They're not online.

9 Q. Where are they?

10 A. I don't know. Probably in Internal Affairs. I
11 don't know where they eventually reside.

12 Q. Do you have access to them in Internal Affairs?

13 A. I would have to ask for them.

14 Q. But you could gather them though, right? Like
15 had you in preparation for this deposition made an
16 attempt to gather the necessary information to testify,
17 you could have received those investigations, right?

18 A. Yes.

19 MR. PHILLIPS: I object to the
20 characterization of necessary. I mean, he's ready to
21 testify about the firearms review board. He knows the
22 process.

23 BY MS. GELSOMINO:

24 Q. Okay. So, if the investigations reviews
25 findings and outcomes, you think they eventually reside

1 **in IA, right?**

2 A. I believe so.

3 **Q. Okay. So where are they before they come to**
4 **that final resting place? Where are they held?**

5 A. I don't understand the question. They would
6 move about the division until they landed in their final
7 resting place.

8 **Q. How do they move about? Is there like software**
9 **or paper copies?**

10 A. Paper copies. And they're hand delivered.

11 **Q. Is there any database or electronic source where**
12 **anything related to the investigation review's findings**
13 **or outcomes of deadly force investigations?**

14 A. Yes.

15 **Q. Where?**

16 A. CIRT I believe would have the criminal
17 investigations. In addition the board's administrative
18 secretary maintains copies where those are being
19 forwarded to, et cetera, and maintain a spreadsheet.

20 **Q. She maintains a spreadsheet of where the**
21 **paperwork is?**

22 A. Where the paperwork is and where the cases are.

23 **Q. Okay. Does that spreadsheet have a name?**

24 A. Probably.

25 **Q. Do you know it?**

1 A. I do not.

2 Q. Okay. Again, had you made an effort you could
3 have seen that spreadsheet, right?

4 MR. PHILLIPS: Objection to the
5 characterization. You can go ahead and answer.

6 A. Yes, I have access to the spreadsheet.

7 BY MS. GELSOMINO:

8 Q. Okay. So in addition to this spreadsheet does
9 the board itself maintain any other electronic documents
10 regarding any of these investigations?

11 A. Yes. Not the board itself, but there are other
12 documents created in that review, yes.

13 Q. What are those documents?

14 A. Of findings to the board to render a written
15 finding.

16 Q. Okay. Anything else?

17 A. No. That's it. There's a calendar of who
18 responds.

19 Q. A calendar?

20 A. Yes.

21 Q. How is that used?

22 A. There's a list of -- I guess there would be two
23 things, a list of people who are on the board, and then
24 there's a callout list for a year as to who will be the
25 firearm responder on any use of firearm respond. March

1 would have Commander A and B responding, and April would
2 have Commander C and D.

3 **Q. And then by responding --**

4 A. There would be only one. I said A and B.

5 **Q. Sure. Basically the responding commander**
6 **changes every month?**

7 A. Correct.

8 **Q. What does it mean to be the responding**
9 **commander?**

10 A. Every month one board member is assigned the
11 responsibility to respond to a police involved shooting
12 and if there's a police involved shooting or death where
13 CIRT was called out, or now The Bureau of Criminal
14 Investigations were called out to do an investigation,
15 that commander is to respond to the scene.

16 **Q. Physically respond to the scene?**

17 A. Physically respond to the scene. Yes.

18 **Q. And then does that commander become responsible**
19 **for ensuring the investigation?**

20 A. No.

21 **Q. Strike that. Does that commander have any**
22 **further responsibilities?**

23 A. Usually, yes.

24 **Q. What are they?**

25 A. His or her responsibility would be to answer

1 questions that other review members who are reviewing
2 that particular case might have about the scene so they
3 could answer what they saw physically with their own
4 eyes the seen, or information they gathered they seen.
5 Traditionally, or generally the preferred course of
6 actions is the responder would be the author of the
7 findings letter, but that's not always possible.

8 Q. We're going to talk in detail about that process
9 a little later. I'm sorry I got sidetracked. I just
10 want to go back and identify all of the different
11 documents that are available to you.

12 So the board secretary has this calendar, this
13 spreadsheet. Anything else held there, electronically
14 or otherwise?

15 A. Not that I can think of.

16 Q. Okay. And then CIRT has documents regarding
17 these investigations?

18 A. Correct.

19 Q. IA has some. Does any other division or area
20 within the police department hold any documents at any
21 point with regard to the Firearms Review Board with
22 regard to shooting investigations?

23 A. So CIRT has copies of original files that exist
24 elsewhere in an investigation. For example, body cam or
25 cruiser video, so those originals would be where they

1 normally are kept, and then the investigators would have
2 copies of the originals.

3 Q. Okay. Anything else?

4 A. I don't believe so.

5 Q. Okay. If at any point you think of additional
6 documentation that's created at any point in any of
7 these investigations, please tell me. Okay?

8 A. Okay.

9 Q. You have been noticed --

10 A. I don't know what you're asking for. If an
11 investigation is also disciplined, then there's a
12 discipline case and there's additional files in a
13 discipline case.

14 Q. And where are those files held in the
15 department?

16 A. Either with The Professional Standards Bureau or
17 Internal Affairs.

18 Q. Okay. We're here today for you to give your
19 testimony in three different cases involving the City of
20 Columbus. One is related to the shooting of Deaunte
21 Bell-McGrew, that case is called Cooper. Are you
22 familiar with that?

23 A. Vaguely.

24 Q. Okay. Do you understand that you're here to
25 give testimony in that case?

1 A. Yes.

2 Q. Okay. The second case is England, the shooting
3 of James England. Are you familiar with that case?

4 A. Vaguely.

5 Q. Okay. But you understand you're here to give
6 testimony in that case, right?

7 A. Yes.

8 Q. And the third case is the shooting of Tyree
9 King. You understand you're here to give testimony in
10 that case as well?

11 A. Yes.

12 Q. And then, you're also -- I'm going to ask you
13 some general questions about The Firearms Review Board
14 also. Okay?

15 A. Yes.

16 Q. Okay. I just want to make sure -- this is a
17 different kind of deposition because we're here for
18 several cases. So I just want to make sure that you're
19 prepared to give testimony on each of those different
20 cases.

21 MR. PHILLIPS: Sarah, not to interfere
22 with your deposition, just so I'm clear what the scope
23 is, he's testifying about The Firearms Review Board as
24 it relates to all of the cases. He's not testifying
25 specifically -- I know it's for all three separate

1 cases, but he's not the investigator in those three
2 cases. He's here to testify as to how these things are
3 investigated and then goes through The Firearms Review
4 Board.

5 MS. GELSOMINO: Yeah. I understand
6 that. But also Wes, he was personally involved in the
7 investigation of the England case.

8 MR. PHILLIPS: Okay. So how are we
9 going to handle that then, because that's separate from
10 a 30(b)6?

11 MS. GELSOMINO: Off the record.

12 - - - -

13 (Thereupon, an off-the-record discussion was held.)

14 - - - -

15 BY MS. GELSOMINO:

16 Q. When did you first learn of the shooting of
17 Deaunte Bell-McGrew?

18 A. I don't recall.

19 Q. Do you recall when you first learned of that
20 lawsuit?

21 A. I do not recall.

22 Q. Okay. Same question for the shooting of James
23 England. When did you first hear of that incident?

24 A. I don't recall.

25 Q. Do you recall when you first learned of that

1 **lawsuit?**

2 A. I do not.

3 **Q. When did you first learn of the shooting of**
4 **Tyree King?**

5 A. On the night it happened.

6 **Q. And how did you learn about it on the night that**
7 **it happened?**

8 A. By phone call.

9 **Q. From whom?**

10 A. I believe it was from The Communications Bureau.

11 **Q. Why did you get that phone call?**

12 A. Because at the time I was the chair person of
13 the board and I received that phone call.

14 **Q. Okay. I will ask you more about that particular**
15 **phone call later. But when did you first learn of the**
16 **lawsuit in that case?**

17 A. I don't recall.

18 **Q. When did you first learn that you were being**
19 **designated as the witness for the deposition?**

20 A. I don't recall.

21 **Q. How many -- do you recall approximately how much**
22 **notice you had before today's deposition?**

23 A. From being notified of the deposition to today?

24 **Q. Correct.**

25 A. I don't recall. A month or so.

1 Q. Okay. So you had plenty of time to prepare for
2 today's deposition, right?

3 A. Yes.

4 Q. Okay. Have you told me everything that you did
5 to gather all information known or reasonable available
6 to the City of Columbus in preparation for this
7 deposition?

8 A. Yes.

9 Q. Okay. Can you just give me a quick rundown of
10 your history with the Columbus Police Department? When
11 did you start?

12 A. 1994.

13 Q. As a patrolman?

14 A. As a recruit.

15 Q. Okay. Before that did you have any other law
16 enforcement or corrections experience?

17 A. No.

18 Q. Have you ever worked for any other police
19 department or law enforcement agency?

20 A. No.

21 Q. Okay. So where did you do your academy
22 training?

23 A. In Columbus.

24 Q. Where?

25 A. At The Columbus Police Academy.

1 **Q. After you were a patrolman what was your next**
2 **job?**

3 A. Sergeant.

4 **Q. Where?**

5 A. Like what precinct?

6 **Q. Uh-huh.**

7 A. The far east side. Zone two and zone five. So,
8 central city and near east side.

9 **Q. Do you know what zone the Deaunte Bell-McGrew**
10 **shooting happened in?**

11 A. I don't. It was either two or five.

12 **Q. Okay. How about the England shooting?**

13 A. Zone two.

14 **Q. And Tyree King?**

15 A. Zone five.

16 **Q. Okay. How long were you a sergeant there in**
17 **zone five?**

18 A. I don't recall. I was a sergeant for about
19 seven years.

20 **Q. Were you a sergeant in other areas?**

21 A. Yes.

22 **Q. Which ones?**

23 A. I was a sergeant over our research and
24 development unit, which crafts policies and forms as an
25 administrative job.

1 Q. Anywhere else?

2 A. As a sergeant, no.

3 Q. Do you recall approximately how long you were in
4 the research and development?

5 A. I want to say about two years.

6 Q. Okay. So approximately five years or so then as
7 a sergeant in zone five?

8 A. Zone two and zone five combined.

9 Q. How are they combined?

10 A. I worked zone two for some years and zone five
11 for other years.

12 Q. Okay. I see. And those are both on the far
13 east side?

14 A. Zone five is the central city. Zone two is the
15 southeast quadrate.

16 Q. When you were a sergeant in zone two and zone
17 five were there any uses of deadly force?

18 A. Yes.

19 Q. In those zones while you were a sergeant there?

20 A. Yes.

21 Q. Let's start with zone two. First of all, what
22 years are we talking here approximately?

23 A. Approximately 2000 to 2007.

24 Q. Okay. So when you were in zone two tell me
25 about the uses of deadly force that happened.

1 A. I'm sorry. I don't recall them specifically.

2 Q. How many?

3 A. I don't know.

4 Q. How could you find out?

5 A. I could ask to see CIRT records from those dates
6 and times.

7 Q. Were you involved in the investigations of any
8 of the uses of deadly force in zone two?

9 A. No.

10 Q. Why not?

11 A. Because sergeants don't do those investigations.

12 Q. Okay. Did you review any of the investigations
13 at any point?

14 A. I don't recall.

15 Q. Did you offer any commentary on any of the
16 investigations from zone two?

17 A. As a sergeant?

18 Q. Yes.

19 A. I do not recall.

20 Q. Okay. Did you -- were any of the uses of deadly
21 force found to be outside of policy while you were a
22 sergeant in zone two?

23 A. I don't recall.

24 Q. Did you ever observe any uses of force that you
25 believed as the sergeant were outside of policy while

1 **you were a sergeant in zone two?**

2 MR. PHILLIPS: Objection. Outside of
3 the scope of this deposition. You can go ahead and
4 answer.

5 A. Physically observe the actual use of force?

6 BY MS. GELSOMINO:

7 **Q. Sure.**

8 A. No.

9 **Q. Do you believe that any of the uses of force**
10 **that happened, I understand you didn't observe the uses**
11 **of force, but do you believe that any of the uses of**
12 **deadly force that occurred while you were a sergeant in**
13 **zone two were outside of policy?**

14 MR. PHILLIPS: Objection. Outside of
15 the scope. You can go ahead and answer.

16 A. I don't recall them.

17 BY MS. GELSOMINO:

18 **Q. Okay. You don't recall any uses of force that**
19 **happened there at all?**

20 MR. PHILLIPS: Objection. Outside of
21 the scope.

22 A. I do not.

23 BY MS. GELSOMINO:

24 **Q. Okay. Same questions for zone five, do you**
25 **recall any of the uses of deadly force that occurred**

1 **while you were a sergeant there?**

2 MR. PHILLIPS: Objection. Outside the
3 scope. Go ahead and answer.

4 A. Yes.

5 BY MS. GELSOMINO:

6 **Q. Can you tell me about those, please?**

7 MR. PHILLIPS: Can I get a continuing
8 objection on this topic because it's outside of the
9 scope of this deposition?

10 MS. GELSOMINO: That would be great.
11 Go ahead.

12 A. Can you repeat the question?

13 BY MS. GELSOMINO:

14 **Q. I just want you to tell me about the uses of**
15 **deadly force that occurred in zone five while you were a**
16 **sergeant there.**

17 A. I only recall one.

18 **Q. Okay. Tell me about that one, then.**

19 A. I was involved and I used the deadly force.

20 **Q. That would make it memorable. Tell me about**
21 **what happened there?**

22 A. An individual shot two people on the west side
23 of Columbus and fled in a vehicle. Myself and other
24 officers intercepted that vehicle on I71, and he shot at
25 us about 100 times with an AK-47, and we shot him at the

1 conclusion of that event.

2 **Q. Did you shoot him while he was driving in the**
3 **vehicle?**

4 A. We shot him while he was driving the vehicle and
5 after he exited his vehicle.

6 **Q. Okay. What was his name?**

7 A. I don't recall.

8 **Q. Did he survive?**

9 A. Yes.

10 **Q. Were any officers injured?**

11 A. Yes.

12 **Q. Which ones and how?**

13 A. An officer suffered a hearing loss injury, and I
14 believe another from cut glass, flying glass.

15 **Q. Was the suspect injured?**

16 A. Yes.

17 **Q. How so?**

18 A. By gunfire.

19 **Q. Where on his body? Describe the injuries to me.**

20 A. I don't recall. I know that one or two was in
21 his shoulder.

22 **Q. Okay. How many times did you fire in that case?**

23 A. I don't recall.

24 MR. PHILLIPS: If this is about his
25 personal deposition, then I'll let you ask these

1 questions, but right now you're doing 30(b)6, right?

2 MS. GELSOMINO: I am.

3 MR. PHILLIPS: So then it's outside of
4 the scope. I'll move to strike all of this testimony.
5 If you want to ask him himself, then that's a different
6 story.

7 MS. GELSOMINO: Okay. Let's ask about
8 his own personal uses of force and his own previous
9 lawsuits for outside of the scope of the 30(b)6 just as
10 his personal deposition.

11 MR. PHILLIPS: Okay. Is there like a
12 way that we can note when you're switching back and
13 forth in this deposition so the record is clear in the
14 future?

15 MS. GELSOMINO: I'll do my best. I
16 didn't anticipate him going down this road. So now --

17 MR. PHILLIPS: Okay.

18 BY MS. GELSOMINO:

19 **Q. In terms of your personal experience with your**
20 **previous uses of force, this guy that was shot in the**
21 **car, describe his injuries to me, please.**

22 A. A number of gunshot injuries, I believe, to the
23 shoulder.

24 **Q. Other than that one-time have you ever**
25 **discharged your firearm in the line of duty?**

1 A. Yes.

2 Q. How many times?

3 A. One other time.

4 Q. Tell me about that time.

5 A. My partner and I were patrolling on five
6 precinct in the area of Joyce and Windsor Avenue where
7 we observed another individual with an AK-47 point the
8 firearm at us.

9 Q. Okay. And then what happened?

10 A. We became in pursuit of that vehicle and I fired
11 one or two shots at him on Sunbury Road.

12 Q. Was anyone injured at all?

13 A. No.

14 Q. Did you strike the suspect?

15 A. I did not.

16 Q. Was he arrested?

17 A. Yes.

18 Q. Do you recall his name?

19 A. I do not.

20 Q. Were either of these use of force investigated?

21 A. Yes.

22 Q. Did you give statements in those investigations?

23 A. Yes.

24 Q. Do you recall when that second one was?

25 A. The second one or the first one?

1 Q. The one where you observed a person holding an
2 AK-47 and pointing it at you.

3 A. That was the first one, and that was in the mid
4 1990s.

5 Q. That's when you were a patrolman?

6 A. Correct.

7 Q. What were the findings in those two
8 investigations?

9 A. Both uses of deadly force were found to be
10 within policy.

11 Q. Have you ever received any discipline at all,
12 any level of discipline formal, informal, counselling,
13 retraining, anything?

14 A. Yes.

15 Q. Tell me about those.

16 A. The first one was a case where I left my cruiser
17 running outside of a run that I was on, and a juvenile
18 stole my cruiser and drove it into the side of a garage
19 and I received a DCC for leaving my cruiser on.

20 Q. What did you receive?

21 A. A DCC. A documented constructive counselling.
22 It's the first level of discipline in the FOP contract.

23 Q. Okay. Is that like a letter in your personnel
24 file or something?

25 A. Yes.

1 Q. Okay. No time off or anything like that?

2 A. No.

3 Q. What was the other discipline?

4 A. I lost my badge once. I found it three weeks
5 after I got the discipline. But I lost my badge.

6 Q. Okay. What kind of discipline did you get for
7 that?

8 A. I got a DCC. I should say I misplaced my badge.
9 I didn't loose it. I found it.

10 Q. I understand. Any other discipline?

11 A. I don't recall. I received a traffic ticket as
12 a result of an accident.

13 Q. Okay. Anything else?

14 A. I don't believe so.

15 Q. If you get a traffic ticket is that
16 considered -- like do you get disciplined for getting a
17 traffic ticket?

18 A. It's complicated, but that replaces discipline.
19 In our traffic investigation process you could receive
20 discipline or a traffic ticket, but not both. I
21 received a traffic ticket.

22 Q. Okay. How about civilian complaints against
23 you, are you aware of any?

24 A. Yes.

25 Q. Tell me about the ones that you remember.

1 A. I don't recall them specifically. There was one
2 recently, but the majority of them would have occurred
3 when I was in patrol.

4 **Q. What's the recent one?**

5 A. Somebody filed a complaint regarding my personal
6 off-duty social media usage.

7 **Q. Tell me about that.**

8 A. That's it. Somebody complained about my
9 off-duty social media usage. I believe it was the
10 employee of the City Attorney's Office, but I don't know
11 for sure because I haven't been told.

12 **Q. When were you made aware of this complaint?**

13 A. Approximately July 7th of this year.

14 **Q. Okay. And do you know what the allegations are
15 regarding your off-duty social media usage?**

16 A. I have no idea.

17 **Q. Well, what have you been told about this?**

18 A. I've been told that I will be investigated for
19 it.

20 **Q. Have you given a statement in that investigation
21 yet?**

22 A. I have not.

23 **Q. Why not?**

24 A. I have no idea. I haven't been asked to.

25 **Q. When you were informed of it in July how were**

1 **you given notice?**

2 A. One of the deputy directors from Public Safety
3 notified me.

4 **Q. No written notice?**

5 A. It was by e-mail.

6 **Q. Okay. What did that e-mail say?**

7 A. Just what I told you, that I was going to be
8 referred for investigation.

9 **Q. Who does that investigation?**

10 A. This one is being conducted by the law firm of
11 Baker Hostetler.

12 **Q. Do you know why?**

13 A. I have no idea.

14 **Q. Have you ever heard of any other investigations
15 to a civilian complaint that was conducted by an agency
16 outside of the police department?**

17 A. Yes.

18 **Q. Tell me about that.**

19 A. Dozens of them were recently referred to Baker
20 Hostetler out of incidents involving riots this summer
21 downtown.

22 **Q. Why is that?**

23 A. I have no idea.

24 **Q. Okay. As you sit here today, do you have any
25 ideas about what social media posts or whatever was on**

1 **your social media that lead to this complaint could be?**

2 A. I'd been provided with one single Tweet that I
3 sent in my personal capacity off duty that was
4 referenced, but I don't know what about that particular
5 Tweet -- I don't know if that one is being investigated,
6 but that was provided to me as an example.

7 **Q. Who provided it to you?**

8 A. Deputy Director George Speaks.

9 **Q. What's that Tweet?**

10 A. I don't have it by memory.

11 **Q. Can you give me an approximation of what that**
12 **Tweet is?**

13 A. Yes.

14 **Q. Go ahead.**

15 A. It is generally that I stated that if you pay
16 someone to do an investigation for you, it's not an
17 independent investigation. That person is your personal
18 contractor.

19 **Q. What were you referring to in that Tweet?**

20 A. It was just the general concept of whether an
21 independent investigation could be done by somebody that
22 you were paying to do the investigation for you.

23 **Q. Which investigation were you referencing?**

24 A. Those investigations are being referred to Baker
25 Hostetler for uses of force.

1 Q. So you don't believe that it would be an
2 independent investigation that Baker Hostetler will
3 conduct?

4 A. It was something that I suggested in a Tweet,
5 yes.

6 Q. What is your opinion on that today?

7 A. Interestingly, it appears that Baker Hostetler
8 actually did pretty good independent investigations,
9 however, the response by the people who paid for that
10 seem to suggest that they expected a different outcome.

11 Q. Who paid for that?

12 A. Columbus City Council by direction of the Mayor.

13 Q. What do you base your statement on that it seems
14 like they did a pretty good investigation?

15 A. I've read most of them.

16 Q. What about them makes you say that they're good?

17 A. They were thorough. They were complete. They
18 got all the available witnesses, et cetera, and they
19 came to conclusions that I believe were fair.

20 Q. Okay. What were the conclusions?

21 A. There's dozens of them, but some of them were
22 sustained, some of them were unfounded, and some of them
23 were not sustained, some of them were exonerated, and
24 some were cancelled for cause, I believe.

25 Q. Did you read these because you were interested

1 personally, or did you read them within your official
2 capacity somehow as a police officer?

3 A. Within my official capacity.

4 Q. Why?

5 A. We were to review them and render our findings
6 on them.

7 Q. Interesting. Who's we?

8 A. The deputy chiefs.

9 Q. All of you?

10 A. Yes.

11 Q. How does that work? Baker Hostetler gave you
12 their findings from their investigations, right?

13 A. Correct.

14 Q. And then what was the next step?

15 A. They were assigned a deputy chief to render
16 their findings.

17 Q. Could you overturn the findings?

18 A. Yes.

19 Q. How many deputy chiefs reviewed each conclusion?

20 A. I don't understand that question.

21 Q. Sure. So there's a bunch of different
22 investigations, right?

23 A. Yes.

24 Q. So for each investigation, each case, how many
25 deputy chiefs reviewed the findings of each case?

1 A. It depends, but generally one.

2 Q. So one deputy chief could agree or disagree,
3 right?

4 A. Yes.

5 Q. And then what happened next?

6 A. That would be the final determination. The
7 deputy chief is the final decider.

8 Q. How many did you review personally?

9 MR. PHILLIPS: Hey, Sarah, I'm going
10 to object. I think this is very irrelevant to our case.
11 I've let you go pretty far with this, but I think this
12 has more to do with the protest issue than police
13 involved shootings. I can let you go a couple more
14 questions, but it seems like -- I don't know if it's
15 your intention, but it seems from where I'm sitting like
16 this is more discovery for a different lawsuit.

17 MS. GELSOMINO: Well, I don't have any
18 other lawsuits right now.

19 MR. PHILLIPS: Right. I get that, but
20 if you were in my shoes, you may be saying the same.
21 This seems a little different than the police involved
22 shooting situations.

23 MS. GELSOMINO: I don't want to spend
24 too much more time on it, but it is an investigation in
25 the police department that's done in a different way, so

1 I'm curious about that. And I think that's relevant
2 because we're here to talk about investigations in the
3 department.

4 MR. PHILLIPS: And if you've noticed,
5 I have let you go.

6 MS. GELSOMINO: I appreciate it, and
7 I'm really almost done.

8 BY MS. GELSOMINO:

9 Q. In terms of the ones that you, yourself,
10 reviewed, did you change any of the findings or disagree
11 with any of the findings of the law firm?

12 A. I don't believe so. Nothing substantively.

13 Q. Do you know if any of the deputy chiefs
14 disagreed on any of the cases?

15 A. Yes.

16 Q. Do you know what those cases were about?

17 A. I don't.

18 Q. Do you know weather there were any cases where
19 the law firm found the use of force to be unjustified
20 that the deputy chief changed or disagreed with?

21 A. I don't believe so, no.

22 Q. Now, you started this off by saying that you
23 thought the reaction from the people who paid for the
24 investigation leads you to think that they were
25 expecting different conclusions.

1 A. Yes.

2 Q. Why do you say that?

3 A. I believe the Mayor's words were that he was
4 angry and surprised at the outcome, and City Council
5 President made similar comments.

6 Q. And your Tweet was related specifically to these
7 investigations?

8 A. A general concept.

9 Q. But you were referencing these investigations,
10 right?

11 A. No. I did not reference these investigations.
12 It was a general comment.

13 Q. What led you to Tweet that?

14 A. I was watching a press conference about the
15 announcement of the investigations at the time.

16 Q. Okay. What's your Twitter handle?

17 A. @Kenkeebbs.

18 Q. How do you spell Keebs?

19 A. K-E-E-B-S.

20 Q. Do you use any other social media?

21 A. Yes.

22 Q. What?

23 A. What?

24 Q. What other social media?

25 A. Instagram, Facebook, Nextdoor, LinkedIn. I have

1 several Twitter accounts.

2 **Q. Okay. Tell me your other Twitter accounts then.**

3 MR. PHILLIPS: Sarah, I have defended
4 a deposition about police social media before, we're
5 fine talking about anything that relates to police
6 stuff, but we're always worried about police officers
7 with strictly personal social media that's just family
8 stuff. So if you could, if it's anything that's just
9 family and not talking about the police --

10 MS. GELSOMINO: Well, I don't agree.
11 All social media accounts are potentially relevant.

12 MR. PHILLIPS: They are?

13 MS. GELSOMINO: Yeah.

14 MR. PHILLIPS: If they're talking
15 about police issues, sure. If they're talking about,
16 like, I don't know, somebody's kids, no, they're not.

17 MS. GELSOMINO: I have no interest in
18 exposing someone's children, Wes, but I don't think you
19 could pick and choose which social media accounts I'm
20 told about in this deposition because of the
21 representation that somebody posts about their family on
22 one of those social media accounts. I'm still entitled
23 to know which social media account he's using to post
24 across formats.

25 MR. PHILLIPS: How is it relevant if

1 it's just strictly a family issue?

2 MS. GELSOMINO: If it has to do with
3 just strictly family issues, and then it could be sussed
4 out down the line. I'm not going to take a
5 representation that something has nothing to do with any
6 policing or other types of comments that could indicate
7 something in this case.

8 BY MS. GELSOMINO:

9 **Q. Ken, do you have any social media accounts where**
10 **you've only posted about your family?**

11 A. Yes. No.

12 **Q. Okay. So tell me about all of your social media**
13 **accounts. What are our other two Twitter handles?**

14 A. I don't know all of my Twitter handles off the
15 top of my head. They're in the app. One of them in a
16 version of Popups, P-O-P-U-P-S. I ran a social media
17 account for a company called Bright Force Software,
18 which is, I believe, now defunct about six or eight
19 years ago, and that would be it.

20 **Q. Bright Force Software?**

21 A. Bright Force, yes.

22 **Q. What kind of software is that?**

23 A. They wrote software for security guard companies
24 like for security guards to walk around, check in and do
25 reports and things.

1 Q. Okay. Did you work for that company in any
2 other capacity other than running their social media?

3 A. No.

4 Q. What's the Popups account?

5 A. It references '80s and '90s cars. I'm a car
6 geek and it references '80s and '90s models of specific
7 cars. It hasn't been posted to in years. We ran a car
8 show a couple of years ago for charity.

9 Q. That's cool. That's it for Twitter?

10 A. That's it for Twitter.

11 Q. How about Instagram?

12 A. I have one account that I use to follow my
13 family.

14 Q. What's that?

15 A. Phyveau. P-H-Y-V-E-A-U-X.

16 MR. PHILLIPS: Hey, Sarah, if you file
17 this deposition will you file that under protection,
18 under seal?

19 MS. GELSOMINO: His Instagram name?

20 MR. PHILLIPS: Accounts that are used
21 just to do family issues.

22 MS. GELSOMINO: Sure.

23 BY MS. GELSOMINO:

24 Q. Have you ever posted on your Instagram or liked
25 any pages or commented on anything that's not related to

1 **your family?**

2 A. On Instagram?

3 **Q. On Instagram.**

4 A. Yes.

5 **Q. Any other Instagram?**

6 A. Yes. Concurrent Popups related to the same
7 Twitter.

8 **Q. Okay. How about Facebook?**

9 A. Yes.

10 **Q. What are your names on Facebook?**

11 A. James Logan.

12 **Q. Just James L-O-G-A-N?**

13 A. Yes.

14 **Q. What else?**

15 A. That's it.

16 **Q. And you said that you used Nextdoor?**

17 A. Yes.

18 **Q. Okay. What's your name on that?**

19 MR. PHILLIPS: I'm going to object to
20 that. That's going to give up where a police officer
21 lives.

22 MS. GELSOMINO: I don't even know what
23 Nextdoor is.

24 MR. PHILLIPS: It's a neighborhood
25 app.

1 BY MS. GELSOMINO:

2 Q. Ken, how do you use that?

3 A. What do you mean by how do I use that? I open
4 the application and type things in it.

5 Q. What's the purpose of the app?

6 A. I have no idea. It's a social media app for
7 neighborhood.

8 MR. PHILLIPS: It's like if there's a
9 lost dog on your street or things of that nature. A car
10 break in on your street or the next street. With a
11 police officer, it's dangerous to give up people's home
12 address and where they live.

13 MS. GELSOMINO: I have no interest in
14 giving out his personal address for anything. If you
15 want to keep this particular name under seal for
16 Nextdoor, I'm fine with that for now. If something
17 comes up then we need to discuss that later, but it's
18 under abundance of caution that's fine. Can you just
19 give it to me off the record?

20 MR. PHILLIPS: Let's go off the
21 record.

22 - - - -
23 (Thereupon, an off-the-record discussion was held.)

24 - - - -
25 BY MS. GELSOMINO:

1 Q. Okay. What about Snapchat?

2 A. No.

3 Q. Do you use any other social media accounts?

4 A. I mentioned LinkedIn.

5 Q. Oh, right. What's your name on LinkedIn?

6 A. Ken Kuebler.

7 Q. Okay. Any other social media?

8 A. No.

9 Q. Do you blog?

10 A. I do not. I have posted things on LinkedIn.

11 Q. Okay. Have you ever?

12 A. I'd say thought pieces. I wouldn't call it a
13 blog.

14 Q. Okay. Do you post thought pieces anywhere else
15 other than LinkedIn?

16 A. I do not.

17 Q. Okay. Have you ever?

18 A. No.

19 Q. Have you ever written anything else for any
20 other publication or website?

21 A. No. I was published in a medical journal at one
22 point, co-published a medical piece on Narcan years ago,
23 but I don't know if that counts as a blog or a thought
24 piece necessarily.

25 Q. That's pretty cool. Any other times that you

1 **were published?**

2 A. I don't believe so.

3 **Q. Have you ever written for any police magazines?**

4 A. No.

5 **Q. Okay. Nothing for any professional**
6 **organizations that you belong to?**

7 A. No.

8 **Q. Okay. It's my understanding that you've been**
9 **sued before, is that correct?**

10 A. Yes.

11 **Q. Okay. How many times have you been named as a**
12 **defendant in a lawsuit?**

13 A. I don't know.

14 **Q. Okay. Do you know the names of any of the**
15 **lawsuits that you've been named in?**

16 A. I do not.

17 **Q. Do you recall the allegations against you raised**
18 **in any of the lawsuits?**

19 A. I do not.

20 **Q. Have you ever given a deposition in a case where**
21 **you were a defendant?**

22 A. Yes.

23 **Q. Like where you were accused of having personally**
24 **been involved in an incident?**

25 A. I get confused with your legal world, but I've

1 been deposed and named in a dozen or more lawsuits in my
2 official capacity here in the division, and I don't
3 recall all of them.

4 Q. Do you know whether any those lawsuits resolved
5 in favor of the plaintiff?

6 A. Not that I'm aware of.

7 Q. Did you ever have to testify in court for any of
8 those case?

9 A. No.

10 Q. Do you know if any of them went to trial?

11 A. I don't know.

12 Q. Do you know if any of them settled?

13 A. I don't know.

14 Q. Do you know whether they were in federal court
15 or state court?

16 A. I don't know.

17 Q. Okay.

18 A. I believe both.

19 Q. Okay. Have you ever been charged with a crime?

20 A. I got a traffic ticket once.

21 Q. Okay. Have you ever been arrested?

22 A. No.

23 Q. Okay. Let's finish your employment history with
24 the Columbus Division of Police.

25 MS. GELSOMINO: And we'll do this back

1 to his capacity as a 30(b)6.

2 MR. PHILLIPS: That works.

3 BY MS. GELSOMINO:

4 Q. Okay. So we left off with your seven years as a
5 sergeant, and you told me that for some period of time
6 that you were in the research and development, right?

7 A. Yes.

8 Q. Did you work on -- what did you work on while
9 you were there as a sergeant?

10 A. As sergeant I oversaw the work of officers, but
11 they worked on policies and directives and forms and
12 research for the chief or other units in the division
13 that asked for research to be done.

14 Q. Does that department still exist?

15 A. Yes.

16 Q. Did you participate in rewriting any policies?

17 A. Yes.

18 Q. Which ones?

19 A. I don't recall.

20 Q. Did you ever rewrite any research or oversee any
21 of that happening regarding use of force?

22 A. I don't know. Probably, but I don't know for
23 sure.

24 Q. Okay. How about anything regarding the Firearms
25 Review Board?

1 A. Not that I recall, but it wouldn't surprise me
2 if I did.

3 Q. Okay. What did you do after your seven years as
4 a sergeant?

5 A. I was promoted to Lieutenant.

6 Q. Do you recall what year that was?

7 A. I believe it was 2007.

8 Q. Okay. What were your assignments as the
9 lieutenant?

10 A. I was Patrol Lieutenant only.

11 Q. How many patrol lieutenants are there in the
12 division?

13 A. Upper 20s, I believe, mid 20s.

14 Q. Okay. So what areas did you oversee?

15 A. I covered third shift primarily on zone five.

16 Q. What's third shift?

17 A. 10 p.m. to 6 a.m., or 11 p.m. to 7 a.m.

18 Q. Okay. How long were you a Lieutenant there?

19 A. Three years.

20 Q. And then what?

21 A. I was promoted to Commander.

22 Q. That was in 2010?

23 A. Yes. 2010.

24 Q. Okay. And what was your assignment as a
25 Commander?

1 A. I was a Technical Service Bureau Commander.

2 **Q. What does that mean?**

3 A. The Technical Services Bureau Commander at the
4 time oversaw fleet, records management, identification,
5 fingerprints, facilities, the computer systems, the
6 network, all the support functions in the background of
7 the division, technical support functions.

8 **Q. Okay. How long did you do that?**

9 A. Two years.

10 **Q. And then what?**

11 A. I was promoted to Deputy Chief.

12 **Q. How many commanders are there within the**
13 **division?**

14 A. The number has vacillated between 17 and 18, but
15 there are currently 18.

16 **Q. Okay. So you became Deputy Chief around like**
17 **2012?**

18 A. Correct.

19 **Q. How many deputy chiefs are there?**

20 A. There are currently six.

21 **Q. And in 2012 were there six?**

22 A. Yes.

23 **Q. Okay. What was your responsibility when you**
24 **first became deputy chief in 2012?**

25 A. I was one of two Patrol Deputy Chiefs.

1 **Q. For how long did you do that?**

2 A. Five years until October, fall of 2017.

3 **Q. Did you and the other patrol deputy chiefs split**
4 **the city geographically?**

5 A. Yes.

6 **Q. What were you responsible for?**

7 A. I was responsible for patrol south, which was
8 zones two, three and five.

9 **Q. Okay. And then after the fall of 2017 where did**
10 **you go?**

11 A. I'm now where I'm at currently, the Special
12 Operation Subdivision Deputy Chief.

13 **Q. Are you the only deputy chief within that**
14 **division?**

15 A. Yes.

16 **Q. What are your responsibilities within the**
17 **subdivision?**

18 A. I oversee the communication bureau, which
19 includes the 911 call takers and dispatchers. So the
20 personnel there, not the hardware or the computer
21 systems in the background or not the radio. The Traffic
22 Bureau, which includes motorcycles, freeway patrol,
23 mounted unit and felony traffic investigations. And
24 then the Special Services Subdivision, which includes
25 SWAT, K9, aviation, executive protection, and large

1 event planning, the emergency operation center. That's
2 it.

3 **Q. That's a lot. Do you have any special training**
4 **in any of those areas that qualifies you to be the**
5 **deputy chief overseeing them?**

6 A. I have extensive training on the event planning
7 and emergency management piece.

8 **Q. Okay. When did you receive that?**

9 A. Throughout my entire career.

10 **Q. Okay. What about SWAT or K9?**

11 A. No.

12 **Q. Have you ever been in any leadership capacity**
13 **overseeing the Firearms Review Board or any other**
14 **investigative body?**

15 A. Those are two separate questions. Firearms
16 Review Board doesn't do investigations. I've overseen
17 the Firearms Review Board and, as I mentioned, I'm
18 overseeing the accident investigation unit currently,
19 which does felony traffic investigation.

20 **Q. Okay. Where in the division of the department**
21 **does the Firearms Review Board sit?**

22 A. Everywhere. The Firearms Review chairperson is
23 a deputy chief of police. The people who sit on the
24 board are commanders throughout the division of police.
25 It isn't a full-time job.

1 Q. Right. Okay. Have you ever been the
2 chairperson?

3 A. Yes.

4 Q. When?

5 A. From approximately 2012 to 2017.

6 Q. Okay. So is the chairperson the deputy chief of
7 the patrol division?

8 A. No. The chairperson is the deputy chief named
9 by the chief of police.

10 Q. It could be any of the deputy chiefs?

11 A. That's correct.

12 Q. Got it. Tell me those years again.

13 A. Roughly from the time that I was promoted in
14 2012 until I changed my assignments to the special
15 operations subdivision.

16 Q. Okay.

17 MS. GELSOMINO: I'd like to take a
18 quick break before we move on and talk about the next
19 area. Give me five minutes or so.

20 - - - -

21 (Thereupon, an off-the-record discussion was held.)

22 - - - -

23 MS. GELSOMINO: Okay.

24 BY MS. GELSOMINO:

25 Q. We're going to talk now about the FRB.

1 **Something that you're very familiar with and I'm not. I**
2 **want you to walk me through this whole process. From**
3 **the time of a police involved shooting on the street**
4 **what happens?**

5 A. So as I mentioned before, the Firearms Review
6 Board responder will show up. At the time these
7 lawsuits are referencing the critical response team,
8 which is a group of, a specialized group of homicide
9 detectives will respond to the scene and conduct the
10 criminal investigation into the use of deadly force.

11 So is CIRT team will conduct a criminal
12 investigation. In the case of a death, they will
13 present that case to the County Prosecutor's office for
14 the Grand Jury. At the conclusion of the investigation,
15 if it was a death, at the conclusion of the Grand Jury
16 process, the investigation that CIRT conducted would be
17 forwarded to the Firearms Death Review Board, firearms
18 police involved situation Death Review Board.

19 At the conclusion if there was not a death, a
20 determination will be made whether there should be
21 criminal charges filed for felonious assault, for
22 example, or whatever the shooting would acquaint. If
23 there's no charge for that non-death, again it would
24 also go to the Firearms Review Board for their process.
25 The Firearms Review Board's process is do the

1 administrative review of that shooting to determine if
2 policy violations had occurred. The legal decisions
3 were made either by the Grand Jury in the case of a
4 death, or by the investigator in the case of not a
5 death. At the conclusion of that, that investigation is
6 forwarded to the board for review in determination of
7 policy violations occurring.

8 **Q. Okay. And every single police involved shooting**
9 **is referred at some point to the FRB?**

10 A. Accidental discharges are not referred to the
11 board necessarily. Accidental discharges are referred
12 to the board, unless it occurred at the range. So an
13 accidental discharge of a weapon during firearms
14 training is not referred to the board. And then also,
15 shootings involving animals and such are also reviewed
16 by the board, but not investigated by CIRT. So CIRT
17 would not do a criminal investigation for the shooting
18 of an animal or a non-intentional discharge. A
19 lieutenant would do that investigation and forward that
20 investigation to the board for policy review.

21 **Q. Okay. So the FRB responder, whoever that**
22 **commander is on the calendar, right, they're the one who**
23 **gets the call?**

24 A. Yes.

25 **Q. Who makes that call from the scene?**

1 A. Nobody from the scene calls the board responder.
2 Our communications bureau, the 911 dispatches and such
3 will make that call to the board member. They have a
4 list of that call out. They have that call-out calendar
5 and they make that call.

6 **Q. In addition to the other calls that they have to**
7 **make involving a shooting?**

8 A. Correct.

9 **Q. What does that FRB responder do on the scene?**

10 A. He or she will meet with the lead detective to
11 check in and say I'm here, let the CIRT sergeant know
12 that he or she has arrived at scene. We'll generally
13 just do observations to see what the scene looks like at
14 the time without necessarily going into the scene, but
15 reviewing the scene from outside, and just being in tune
16 for any issues or concerns or things that they might
17 need to know from an administrative perspective that the
18 criminal investigator might not necessarily be
19 interested in finding out. I can't come to an example,
20 but there might be an administrative question that's not
21 relevant to the criminal investigation that the board
22 member might want to have tidied up.

23 **Q. You can't think of any examples of what that**
24 **might be?**

25 A. Not off the top of my head. I just wanted to

1 leave that out there. It's one of the responsibilities
2 to look for things that a criminal investigator may not
3 pick up on that would be important in making an
4 administrative decision. Certainly a shooting could be
5 legally justified, but not justified by policy.

6 **Q. Sure. Have you ever been involved in any --**
7 **strike that. I mean, since 2005 have any shootings been**
8 **found to be legally justified but outside of policy?**

9 A. Well, the England case was originally found
10 outside of policy and, obviously, was not presented for
11 legal prosecution. That's one here. I don't want to
12 say no, but I'm trying to think off the top of my head
13 of one that I can think of. There's one that I actually
14 was the board responder on in 2010 or so, and that was
15 an officer Billy Camp-Donavon, and she fired at a
16 fleeing murder suspect, and that was found to be legally
17 justified, but not within division policy. She shot at
18 him fleeing in a car with a bad backstop and such. It
19 was not presented for prosecution, but she was
20 departmentally charged for policy violation.

21 **Q. And what was the violation of policy there?**

22 A. Firing at a moving vehicle when it wasn't a
23 threat to her, and general backstop, putting other
24 people in danger with your use of deadly force.

25 **Q. Does that mean like --**

1 A. People that would have been down range of her if
2 she missed the person or what she was shooting at.

3 Q. In her line of fire. Okay. What was the
4 discipline that was recommended?

5 A. I don't recall. It was a suspension of some
6 number of hours, but I don't recall what those hours
7 were.

8 Q. Do you know whether she was actually suspended?

9 A. She was. As I recall she was, yes.

10 Q. Okay. Other than the England case and her case
11 can you think of any other times since 2005 where a
12 discharge has been found legally justified but a
13 violation of policy?

14 A. When I say, "legally justified," the shootings
15 that don't involve a death not necessarily going to a
16 Grand Jury for prosecution. The decision to prosecute
17 is made without the use of a Grand Jury. When I say,
18 "legally justified," what I mean is it was not
19 prosecuted, but certainly we have had a number of
20 outside of policy uses of deadly force, so I have to say
21 yes, but I can't think of the nature of those cases.

22 Q. We'll go through some later so maybe it will
23 refresh your recollection. In general though, where
24 could we look to find the answer to that?

25 A. The spreadsheet that I mentioned before managed

1 by the Firearms Review Board administrative secretary.

2 **Q. Okay. The FRB responder that goes to the scene,**
3 **does that person have any other responsibilities on the**
4 **scene that you haven't told me about yet?**

5 A. No. Let me back up to the previous question
6 also. Every unintentional discharge or accidental
7 discharge, we use the unintentional instead of
8 accidental, but we commonly use both words. Every
9 unintentional discharge is a violation of policy, but
10 not prosecuted. Those investigations are done by a
11 lieutenant, not by the board. We don't present that as
12 a negligent discharge type of case.

13 **Q. Wait. The investigation for an accidental**
14 **discharge are not done at all by the Firearms Review**
15 **Board?**

16 A. Investigations are not done by the review board,
17 they're done by CIRT or a lieutenant. The board reviews
18 investigations but does not conduct investigations. An
19 accidental discharge is investigated by a lieutenant.

20 **Q. And still reviewed by the FRB?**

21 A. Correct. The exception to that is, if it could
22 be reasonably believed that an unintentional discharge
23 was intended for a human, if you're chasing a suspect
24 and your gun goes off, if somebody might think it was
25 intended toward somebody else, CIRT will do that

1 investigation.

2 **Q. Okay. Who makes that decision?**

3 A. Generally the consultation between the
4 lieutenant and the CIRT, and the lieutenant's commander
5 or the CIRT commander, and sometimes it gets up to
6 deputy chief, if there's a question we err on the side
7 of having CIRT do an investigation.

8 **Q. Okay. Does anyone from the FRB have anything to**
9 **do with that decision?**

10 A. No.

11 **Q. Okay. The FRB responder on the scene, do they**
12 **do anything else that you haven't told me about?**

13 A. No.

14 **Q. Okay. Is that person or any representative of**
15 **the FRB involved in any way in the investigative**
16 **process?**

17 A. No.

18 **Q. Do they have access to the investigative process**
19 **during the investigation?**

20 A. No.

21 **Q. Never sit in on interviews or anything?**

22 A. No.

23 **Q. Okay. Why not?**

24 A. Because they're a review board, not an
25 investigative board. Their job is simple to review the

1 investigations, not conduct them.

2 Q. Okay. Do they have any investigative powers,
3 like, at some point if someone on the FRB wants to talk
4 to the shooting officer or something, or a witness?

5 A. No.

6 Q. They can't do that?

7 A. No.

8 Q. Okay. Can someone on the review board request
9 further investigation into any specific area?

10 A. Yes.

11 Q. How does that work?

12 A. The board member who is reviewing an
13 investigation, if they have concerns about an
14 investigation could go to a chairperson, who would then
15 reach out to investigative subdivision's deputy chief to
16 recommend a further explanation as to something that
17 occurred.

18 Q. Okay. How often does that happen?

19 A. It's infrequent, but it has occurred on
20 occasion.

21 Q. Okay. Can you think of any time that it's
22 occurred since 2005?

23 A. Yes.

24 Q. Tell me about those times.

25 A. I can think of just one off the top of my head.

1 It involved a SWAT shooting that I investigated and I
2 had some questions about the recorded interviews of one
3 of the witnesses. So I consulted with an investigative
4 deputy chief and I said, "I'm confused as to this line
5 of questioning from the investigator to the" -- I was
6 confused by the summary, I guess I should say, of the
7 discussion that the investigator had with the witness,
8 and they went back and reviewed that audio of that and
9 clarified some questions for me.

10 **Q. Okay. When you say that you investigated that,**
11 **what do you mean by that?**

12 A. I said investigated? I meant reviewed it as the
13 deputy chief.

14 **Q. You're going to confuse me.**

15 A. No. I reviewed the shooting as the deputy
16 chief, the ultimate decider on that shooting, and I
17 wanted that summary cleared up.

18 **Q. Okay. So the FRB responder goes out to the**
19 **scene, but then a long period of time can pass before**
20 **that shooting gets back to the FRB for review, right?**

21 A. Yes.

22 **Q. Does the FRB do anything until the conclusion of**
23 **the investigation?**

24 A. No.

25 **Q. The criminal investigation?**

1 A. No.

2 **Q. Okay. So then how does the investigation get**
3 **sent to the FRB?**

4 A. When the criminal investigation is concluded,
5 the CIRT sergeant will complete the packaging up of the
6 investigative materials, deliver it to the
7 administrative secretary and the administrative
8 secretary will assign it to three board members for
9 their review. It's physically hand-delivered.

10 **Q. Is this still all done with physical copies?**

11 A. Yes.

12 **Q. Is there any electronic file whatsoever?**

13 A. No. It's printed out, obviously, from an
14 electronic file. There's a Word document somewhere
15 that's printed and bound, but the electronic package is
16 not forwarded around. It's printed as a binder of
17 investigation.

18 **Q. Okay. And you said that binder is delivered to**
19 **the board secretary?**

20 A. Correct. Usually three copies of it.

21 **Q. Okay. Who's the board secretary?**

22 A. Currently it's a woman named Nancy Cameron.
23 C-A-M-E-R-O-N.

24 **Q. Was Nancy Cameron the board secretary in 2015,**
25 **'16 and '17?**

1 A. Yes.

2 **Q. Okay. And then she assigns it to three board**
3 **members?**

4 A. Correct. Generally a responder plus two others,
5 but it's not always possible.

6 **Q. Why is it not always possible?**

7 A. People retire or leave and are no longer
8 available.

9 **Q. Are there any other reasons?**

10 A. There are a number of commanders. The
11 professional standard bureau commander who cannot sit on
12 the board because of their roles in processing
13 discipline. It's possible that in-between the person
14 being the responder and the conclusion of that
15 investigation that commander may have changed
16 assignments. If a commander moved to an assignment or
17 they time out. There's time limits of sitting on the
18 board as well. She tries to manage that so a person
19 doesn't get an investigation if they're coming close to
20 their timing out of the board.

21 **Q. Is that just discretionary? Like her discretion**
22 **to determine which board members are on which shootings?**

23 A. Yes. It's about managing caseload and how many
24 they have. During busier times or years, somebody might
25 get more than they get otherwise, but she tries to

1 balance the load.

2 **Q. Okay.**

3 A. You wouldn't assign the person's commander
4 either. So if the review board -- if a person has
5 changed from one assignment to another during the course
6 of an investigation she would try not to assign the
7 investigation to that employee's current commander to
8 sit on the board. That person's current commander will
9 review the case later after the board has rendered its
10 findings.

11 **Q. Okay. How many members of the Firearms Review**
12 **Board are there at any given time?**

13 A. Nine.

14 **Q. How are those nine members chosen?**

15 A. They are assigned by considering who is
16 currently available; who hasn't timed out; who isn't in
17 the one of those prohibited positions, like Internal
18 Affairs and Professional Standards. And then they're
19 assigned -- I haven't been the board chair for three
20 years, and if I recall it was a three year term, and so
21 you'll spend some of that time as a responder and some
22 of the time as a reviewer only. Of those nine, six of
23 any given year are responders, and the other three are
24 just reviewers.

25 **Q. Okay. Who assigns them?**

1 A. To the board?

2 Q. Yes.

3 A. The chairperson.

4 Q. And who selects the chairperson?

5 A. The chief of police.

6 Q. Is that a three year assignment as well?

7 A. There's no term on the chairperson.

8 Q. Okay. And you were the chair person from 2012
9 to 2017?

10 A. Approximately, yes.

11 Q. Okay. Why did you end up leaving that position?

12 A. The chief just reassigned me when I left patrol
13 and was taking on a new role. The chief likes to push
14 all those responsibilities around to make sure everyone
15 has opportunities and cross-training. And you don't
16 want to leave a board position in one-person's control
17 for too long. It's just generally not a good practice.

18 Q. Okay. So once Nancy assigns a file to three
19 board members, right?

20 A. Yes.

21 Q. What's next?

22 A. The board members will review the investigation
23 and they will generally consult with each other and the
24 assigned writer, which is usually the responder, will
25 render the opinion of the board. It's a majority

1 opinion as to the outcome. So two of the three, or
2 three of the three must agree to a finding.

3 **Q. What if one -- can a person descent?**

4 A. Yes.

5 **Q. How do they do that?**

6 A. So sometimes they'll write a descent and that
7 will be included with a board's finding. Sometimes the
8 writer will record the descenter's descent in the
9 board's rendered finding. But regardless all three
10 members will sign the board's finding, the majority
11 finding of the board, and if the descenter wants to
12 write a descent, he or she can do that as well.

13 **Q. Okay. What materials are included for the board**
14 **members to review?**

15 A. Sometimes hundreds of sheets of paper, which is
16 the CIRT investigation; that's the documented witness
17 transcripts, and descriptions of the scene. The
18 coroner's report if it's a fatality. News articles
19 about the incident. Charging documents if there were to
20 be a charge out of it. Videos, audio recording,
21 surveillance videos or body cam videos that are on CD or
22 DVDs. Our internal report system report. So at any
23 time an investigation is conducted whether it's a
24 burglary or a shooting, there's an internal report
25 created, victim, suspects, witnesses, et cetera. That

1 report will be printed out and included in that
2 investigation. They're called progress summaries.
3 Everything that the detective reduces to writing to
4 discuss what's happened.

5 **Q. As a reviewer do you have a responsibility to**
6 **read and review every bit of evidence that's presented**
7 **to you?**

8 A. Yes.

9 **Q. So do you review the actual transcripts or**
10 **summaries?**

11 A. Personally I would review the transcripts and
12 the summaries both.

13 **Q. What about the rest of the FRB?**

14 A. They were expected to be a thorough review.
15 Whether they do a summary review or a transcript review,
16 I don't know. I couldn't answer which portion.

17 **Q. Okay. Is the thorough review defined anywhere?**

18 A. I don't believe so.

19 **Q. So what happens are the writer writes the**
20 **opinion of the board?**

21 A. It is then forwarded to the employee or
22 employees, plural, chains of command for their final
23 findings. So the board is a recommendation, and then
24 the deputy chief eventually. So, if it's an officer, it
25 will be sent to the officer's sergeant, who then sends

1 it to the lieutenant, the commander, then the deputy
2 chief, and the deputy chief will render a final decision
3 unless the deputy chief disagrees with the board.

4 **Q. Okay. Let's break that down a little bit. So**
5 **the board makes a recommendation?**

6 A. Yes.

7 **Q. What kind of recommendation?**

8 A. A finding of -- so beginning in 2013 somewhere
9 in there we reduced it to four possible outcome
10 recommendations from the board. So was the use of
11 deadly force intentional or unintentional, and was it a
12 violation of policy or not a violation of policy.

13 **Q. Okay. So you make those recommendations or**
14 **findings. Does the board also make a recommendation for**
15 **discipline?**

16 A. No.

17 **Q. So they just say in policy, intentional or vise**
18 **versa, it's just those four lines and that's it?**

19 A. Yes. That's it.

20 **Q. So then it's forwarded to the chain of command**
21 **of the individual employee?**

22 A. Yes.

23 **Q. Where does it start?**

24 A. It depends on the rank of the person. If it was
25 a sergeant who fired, it would start with the sergeant's

1 lieutenant. If it was an officer who fired, it would
2 start with the officer's sergeant.

3 **Q. Basically it starts with their immediate**
4 **supervisor?**

5 A. Yes.

6 **Q. Okay. And what is forwarded to their immediate**
7 **supervisor?**

8 A. The same investigation that the board reviewed.

9 **Q. The entire binder?**

10 A. The entire binder and all the disks and
11 photographs. Yes.

12 **Q. And also with the recommendation of the FRB?**

13 A. Yes.

14 **Q. Why is it forwarded to the their immediate**
15 **supervisor?**

16 A. The board makes a recommendation and the chain
17 of command makes the final determination. If there's
18 going to be any discipline, it must come from the
19 person's immediate supervisor per the contract with the
20 Division of Police. So the board does not have the
21 ability to issue discipline.

22 **Q. Does the board have an ability to recommend**
23 **discipline?**

24 A. No. The board has no part whatsoever in the
25 discipline process.

1 **Q. Who recommends discipline, if any?**

2 A. The immediate supervisor or any other person
3 higher in the chain of command.

4 **Q. Okay. So when it's sent to the chain of**
5 **command, is this what the routing sheet tracks?**

6 A. Yes. The routing sheet can track -- it's a
7 general document in the division. But yes, in this case
8 it would track the chain of command.

9 **Q. Is there just one routing sheet for this entire**
10 **FRB or this entire investigative and review process?**

11 A. No.

12 **Q. Okay. Describe to me how the routing sheets are**
13 **used in the course of this.**

14 A. The routing sheet only has lists for five or six
15 people on it, so if the document moves through more than
16 five or six people, you would just have to continue one
17 to another routing sheet and continue as necessary.
18 It's created new, I believe, from the board to the chain
19 of command. There's no routing sheet when it's in the
20 board, and there's a routing sheet then once the board
21 assigns it back to the chain of command.

22 **Q. Okay. So even though there might be multiple**
23 **pages of routing sheets, there's one comprehensive**
24 **document that follows the investigation throughout the**
25 **chain of command?**

1 A. Yes.

2 **Q. Okay. And --**

3 A. To point out, if there are officers from
4 multiple chains of command, there'd be two separate
5 routing sheets because you'd send a copy to both chains
6 of command.

7 **Q. Okay. That makes sense. What does the**
8 **immediate supervisor do?**

9 A. The immediate supervisor would either concur or
10 descent with the board's finding, and then would also
11 chose one of those four outcomes, intentional, not
12 intentional, violation of policy or not violation of
13 policy, reduce that on the routing sheet, or sometimes
14 create a separate letter and say "see comments on my
15 letter," and then forward it to the next person in the
16 chain.

17 **Q. Okay. So whatever their findings are they're**
18 **indicated on the routing sheet?**

19 A. Yes. Or is a side letter that they would point
20 to from the routing sheet.

21 **Q. Right. But the routing sheet will reference**
22 **whatever additional documentation?**

23 A. Yes.

24 **Q. Okay. Other than a side letter and signing the**
25 **routing sheet does the immediate supervisor create any**

1 **documentation?**

2 A. No.

3 **Q. Is there any concern that an immediate**
4 **supervisor is somehow bias toward finding in favor**
5 **toward a police officer?**

6 A. I don't have that concern.

7 **Q. Does the department have that concern in any**
8 **way?**

9 A. Not that I'm aware of.

10 **Q. Does the Columbus Division of Police do anything**
11 **to ensure that bias does not impact the results of the**
12 **investigation in the chain of command?**

13 A. All new supervisors go through extensive
14 supervisor training, what we call supervisor school or
15 sergeant school, and those issues are certainly
16 discussed in that training.

17 **Q. Okay. Other than training in the sergeant**
18 **school about this, does the Division of Police do**
19 **anything to ensure that bias does not impact the**
20 **investigation process of a police involved shooting?**

21 A. It's subjected to multiple levels of review, so
22 one person's bias would not have -- would be deluded by
23 other people's review, if you will. So if it were
24 obvious, I would expect the next level supervisor to
25 pick up on that.

1 Q. So after the immediate supervisor or sergeant
2 makes their findings, then what happens?

3 A. Then it moves to the next person in the chain of
4 command all the way to the deputy chief.

5 Q. Does any of the review at any level differ from
6 what you've already told me about?

7 A. The process?

8 Q. Yes?

9 A. No.

10 Q. Okay. So they review the investigation that
11 everyone else reviewed and they make a finding on the
12 routing sheet?

13 A. Yes.

14 Q. Okay. And I assume they can also make some kind
15 of side letter or something, if they want?

16 A. Yes.

17 Q. Any other documentation created along with this
18 way at all?

19 A. No.

20 Q. Who's the ultimate decision-maker regarding the
21 findings of the FRB?

22 A. If the deputy chief agrees with -- the deputy
23 chief is the final decision-maker in the chain of
24 command. If the deputy chief agrees with the board's
25 finding, the deputy chief is the final decision-maker.

1 If the deputy chief descends with the board, the chief
2 of police is the final decision-maker.

3 **Q. Okay. So if the deputy chief agrees with the**
4 **Firearm Review Board recommendation, then there's no**
5 **further review of the deputy chief's findings, correct?**

6 A. That's correct. Well, if the board finds it's
7 in violation of the policy and the deputy chief finds it
8 in violation of policy, then there will be discipline
9 rendered and generally be departmental charges. The
10 chief would hear that criminal charges hearing. The
11 discipline would move to the chief's office.

12 **Q. And at that point the chief could chose to --**
13 **what options are available to the chief?**

14 A. First the chief would have to make a
15 determination whether he or she found the shooting to be
16 one of those four things. Intentional, unintentional,
17 in policy or a violation of policy. The chief could
18 overrule the board if the chief found an outside of
19 policy shooting in policy at the charges hearing, and I
20 believe that happened in the England case, or the chief
21 could agree that a shooting is in violation of policy
22 and recommend discipline.

23 **Q. Okay. So in any case where discipline is**
24 **recommended, the chief is the final policy maker for**
25 **those cases?**

1 A. No. Are you referencing firearms cases or any
2 cases?

3 **Q. Firearms cases.**

4 A. So it's conceivable that in a firearms case a
5 deputy chief could find somebody to have violated policy
6 and determine that a DCC is the appropriate course of
7 action, the lowest course of discipline, the deputy
8 chief can issue that discipline without the chief's
9 involvement. If the deputy chief wishes for a written
10 reprimand or a departmental charges hearing to be held,
11 the chief must approve that level of discipline.

12 **Q. Okay. Run me through the levels of discipline.**
13 **There's DCC at the bottom?**

14 A. Yeah. There's something -- there's counselling,
15 that's the first step in the corrective action process,
16 but it's not formalized discipline per the contract. I
17 noticed you showed up late to work today, don't do it
18 again tomorrow. That's not reduced to writing or a
19 formalized piece of discipline.

20 The next step would be DCC, documented
21 constructive counselling, and as you mentioned, that's
22 basically a letter in the file that's maintained for a
23 short period of time and can serve as the basis for
24 progressive discipline in the future, if necessary. The
25 next level up, if you bypass that DCC, if you wanted to

1 go to a written reprimand, the chief of police would
2 have to approve going outside of the progressive process
3 of the DCC and giving a written reprimand.

4 The next step would be departmental charges,
5 which isn't actually discipline. Departmental charges
6 is that the chief is going to hear this case and render
7 a finding on discipline. The next level of discipline
8 would be a suspension or termination.

9 And so, the first step of discipline is a DCC,
10 the second step is a written reprimand, the third step
11 is a suspension or termination, but what we call that is
12 a departmental charges hearing and the chief would then
13 give that discipline. The chief could give a DCC, a
14 written reprimand, throw the case out entirely, or
15 recommend termination or suspension.

16 **Q. Okay. So suspension or termination never can**
17 **happen without a chief's hearing, right?**

18 **A. That's correct.**

19 **Q. So in a firearms case if the Firearms Review**
20 **Board recommends a written reprimand or a DCC?**

21 **A. The Firearms Review Board, as I mentioned, does**
22 **not recommend discipline.**

23 **Q. Okay. Let's start from the top. If the**
24 **Firearms Review Board finds something to be intentional**
25 **and out of policy, and the chain of command agrees, and**

1 **then the chain of command recommends a DCC or written**
2 **reprimand, does that go to the chief of police for a**
3 **hearing?**

4 A. The written reprimand would have to be approved
5 by the chief of police if it wasn't based on progressive
6 discipline, but it would not be done during a hearing.
7 The deputy chief could issue a DCC on his or her own,
8 the deputy chief can write a reprimand pursuant to
9 progressive discipline. In other words, the person had
10 a DCC prior for the same behavior, you can issue a
11 written reprimand without the chief's approval. If this
12 is a person's first discipline case on this matter and
13 you want a written reprimand, the chief of police would
14 have to approve that by contract.

15 **Q. Would the chief of police have to approve it if**
16 **it was a written reprimand, but it was progressive**
17 **discipline?**

18 A. No.

19 **Q. Okay. When you say, "progressive discipline,"**
20 **what do you mean?**

21 A. So with a public employee discipline, so if I
22 was late to work today and you said, "don't come late to
23 work tomorrow," and I showed up late to work tomorrow,
24 in Columbus you would get a DCC. If I showed up late to
25 work within the administrative use time period of that

1 DCC again, I could get a written reprimand. It's more
2 discipline based on the same event that keeps occurring.
3 If I continue to show up late I could be departmentally
4 charged and the chief would hold a hearing for that.

5 **Q. Okay. So in a case where the Firearms Review**
6 **Board finds it to be outside of policy and the chain of**
7 **command agrees and recommends suspension or termination**
8 **the chief --**

9 A. The chain or command does not recommend
10 suspension or termination.

11 **Q. Okay. They recommend departmental charges?**

12 A. Correct.

13 **Q. Okay. So if they recommended departmental**
14 **charges then the chief of police is the final**
15 **decision-maker regarding that discipline and review?**

16 A. No.

17 **Q. Why?**

18 A. The public safety director would have to step in
19 if it was suspension or termination.

20 **Q. There's a lot of steps to this, Ken. At what**
21 **point does the safety director come in?**

22 A. If the chief recommends a suspension or
23 termination, it would have to go to the public safety
24 director. The chief of police has a one option called a
25 leave forfeiture option, so up to 120 hours worth of

1 suspension, essentially you could offer the employee the
2 opportunity to deplete their leave time banks up to that
3 amount instead of serving the unpaid suspension.

4 **Q. Leave time?**

5 A. Vacation time, compensatory time off. So the
6 chief of police can say, "I'll give you an eight hour
7 suspension but offer you the opportunity for leave
8 forfeiture," and the employee could accept to give up
9 eight hours of vacation time to quote, unquote, serve
10 that suspension, if you will, and the case never goes to
11 the safety director in that case. Any suspension of
12 more than 120 hours has to be served as an suspension
13 and the safety director has to weigh in on it to make
14 the determination.

15 **Q. Okay. You said that the chief can give them the**
16 **option of leave?**

17 A. Leave forfeiture.

18 **Q. Okay. So assuming the chief recommends a 120**
19 **hour suspension and it has to go to the safety director,**
20 **how does that process then work?**

21 A. The safety director holds a hearing similar to
22 the chief of police and would render a final decision.

23 **Q. So the chief of police is only the final**
24 **decision-maker in the case of a suspension over 120**
25 **hours or determination, correct?**

1 A. Did you say under 120 hours, or over?

2 Q. Let me start that question again. The safety
3 director is the final decision-maker in cases where
4 there's recommended suspension of over 120 hours or
5 termination?

6 A. Or if the chief of police does not offer leave
7 forfeiture for less than 120 hours. The chief can say
8 this is an eight hour suspension and you have to serve
9 it. That can go to the director's office.

10 Q. Okay. So anything basically between that level
11 of discipline, a suspension where there's no leave
12 forfeiture option, a suspension of over 120 hours or
13 termination, between that and a DCC, the chief is the
14 final decision-maker, right?

15 A. Yes.

16 Q. And then for any discipline which is just a DCC
17 the duty chief in the chain of command would be the
18 final decision-maker?

19 A. Yes.

20 Q. Okay. I think I understand it now.

21 A. The deputy chief would also be the final
22 decision-maker on the written reprimand pursuant to
23 progressive discipline.

24 Q. Okay. Do you know how long a DCC stays active
25 in the file to be part of progressive discipline?

1 A. That has changed over the years. I believe nine
2 months at the time of these cases, and it is a year now,
3 I believe.

4 **Q. So after nine months at the time of these cases**
5 **or a year now, the DCC cannot lead to progressive**
6 **discipline ever again?**

7 A. Correct.

8 **Q. Okay. Is there any part of the FRB process or**
9 **any function of the FRB that we haven't talked about?**

10 A. I don't think so. Well, the Firearms Review
11 Board does an annual use of deadly force analysis. That
12 might be one of the documents that you asked about
13 earlier today. So the use of force analysis the
14 chairperson or the vice chairperson is responsible for
15 putting that together.

16 **Q. What is the purpose of that?**

17 A. To identify trends, or training needs, or other
18 things that might influence the decision-makers to
19 change policy or training or make adjustments in the
20 division.

21 **Q. How are trends tracked?**

22 A. Nancy Cameron does that spreadsheet and includes
23 that information for purposes of that report. She
24 tracks number of officers involved, date and time of the
25 situation, daylight, not daylight, inside of business,

1 outside of business, or at homes, all the demographics
2 of the shooting, if you will. The chairperson and vice
3 chairperson will review that annually to look for trends
4 and training needs, et cetera.

5 **Q. Okay. So it's the responsibility of the**
6 **chairperson or vice chairperson to analyze the data to**
7 **identify the trends and training needs?**

8 A. Yes. Policy changes, if necessary.

9 **Q. Since 2005 what kind of trends have been**
10 **identified through this analysis of the FRB statistics?**

11 A. Certainly there are trends regarding -- so
12 several years ago we noticed that dog shootings were
13 increasing, so there was an evaluation of those dog
14 shootings. Why were they occurring? How were they
15 occurring? Do we need additional training or tools with
16 aggressively behaving dogs and such? So we made some
17 adjustments in that regard. You will notice as you do
18 those reviews that we had a spate unintentional
19 discharges a number of years ago where officers were
20 unintentionally discharging their firearms, and we made
21 some training changes and adjustments to that process.

22 Certainly we looked to see where shootings were
23 occurring, whether they were daylight shootings or
24 nighttime shootings to help, again, influence our
25 training decisions. So if all of our shootings were

1 occurring at night, we would want to maybe make more
2 night scenario trainings and that type of thing.

3 Q. How is that information like passed on if the
4 chairperson identifies a trend, say with the nighttime
5 shootings? Is that a true one actually or just an
6 example?

7 A. That's just an example.

8 Q. The dogs though were?

9 A. The dogs and the unintentionals were real.

10 Q. Okay. So let's talk about the unintentionals.
11 So when this trend was identified that there was a spate
12 of unidentified shootings, how is that information
13 passed on within the department to actually implement a
14 change?

15 A. So the report is shared annually with the deputy
16 chiefs and I believe the commanders as well. So the
17 chief will consider that and develop new training to
18 address that particular situation.

19 Q. Once the chairperson or vice chairperson puts
20 these recommendation in the report -- it goes in the
21 report, right?

22 A. Yes.

23 Q. Are there any other ways that recommendations or
24 trends or policy change recommendations or anything are
25 identified and communicated other than in that report?

1 A. I know at times. I don't know that it occurred
2 annually. At times the board chairperson will ask to
3 meet with the executive staff and have an in-person
4 conversation about that.

5 **Q. Since 2005 how many times has that happened?**

6 A. I don't know.

7 **Q. Do you know of any times that that's happened?**

8 A. I believe it occurred with the unintentional
9 discharges. I've not been a member of the executive
10 staff since 2005, so I can't speak to the majority of
11 the time that you're referencing. I have no idea prior
12 to my time on the executive staff. I know that it
13 occurred when we had the unintentional discharge
14 situation.

15 **Q. When you say your time on executive staff, what
16 do you mean?**

17 A. The deputy chiefs and the chief are members of
18 executive staff. I was not been a member prior to 2012.

19 **Q. Okay. So are you saying to me that you don't
20 know between 2005 and 2012 whether that ever happened?**

21 A. Correct.

22 **Q. Okay. So do you know after 2012 if that's
23 happened?**

24 A. The unintentional discharges one I believe was
25 after 2012, and I believe we had the vice chairperson

1 come in and have a conversation about that.

2 **Q. Okay. The information about whether or not the**
3 **chairperson or vice chairperson raised any issues in a**
4 **meeting to the executive staff between 2005 and 2012 is**
5 **available to the Division of Police, right? Like you**
6 **could have found that out if you wanted to before this**
7 **deposition?**

8 A. If a meeting occurred between 2005 and today?

9 **Q. Yes.**

10 A. I doubt it.

11 **Q. Why?**

12 A. There would not be records of calendars or
13 meetings going back to 2005.

14 **Q. Okay. Other than the dogs and the accidental**
15 **discharges since 2005, has the FRB annual report**
16 **recommended any other changes with any problematic**
17 **trends?**

18 A. I don't know. I don't believe so.

19 **Q. In terms of the dog issue was there any follow**
20 **through in relation to the recommendations?**

21 A. Yes.

22 **Q. What happened?**

23 A. There was training to the entire division about
24 alterative methods to try to scare or dissuade an
25 attacking dog other than using deadly force. I believe

1 there were some changes made to one the groups that
2 happen to shoot a lot of dogs. That was our intact
3 unit, and I believe they made changes to their
4 procedures as well.

5 **Q. When did that happened?**

6 A. I think it was 2015, but I don't know exactly.

7 **Q. And have those changes that you just noted led**
8 **to a decrease in the number of shootings in relation to**
9 **dogs?**

10 A. I believe so, yes.

11 **Q. And then regarding the accidental discharges, I**
12 **have the same line of questioning. Has there been any**
13 **follow through relating to the recommendations of the**
14 **FRB?**

15 A. Yes.

16 **Q. Tell me about them.**

17 A. Primarily, if I recall, they were related
18 largely to long guns, shotguns and rifles. So there was
19 enhanced training at first. And when officers went to
20 firearm qualifications for those weapons there was
21 additional discussion and conversation about why those
22 were happening.

23 **Q. Okay. Any policy changes there?**

24 A. There has been a notice of discipline policy, if
25 you will, regarding accidental discharges that occur

1 when long guns, especial shotguns are loaded and
2 unloaded at the substation. There's a specific
3 procedure for loading a shotgun, that if not followed
4 properly can result in the discharge of a shotgun shell.
5 So we have special devices in the substations designed
6 to capture that collection of pellets as it leaves the
7 firearm so nobody gets hurt. And so we used various
8 levels of incentives, if you will, and disincentives to
9 make sure that officers are using that barrel trap when
10 doing that loading procedure to ensure that the trap is
11 used as intended to keep people safe.

12 For example, and I was part of this on both
13 ends, historically the accidental discharge or
14 unintentional discharge of a firearm would generally
15 result in a written reprimand. That would be the
16 primary outcome of an unintentional discharge. And so
17 in the late 2000s when I was a lieutenant, I had a
18 similar case where the officer used the bullet trap
19 properly and had an accidental discharge. I approached
20 my deputy chief at the time and said if they use the
21 device that we want them to use and still give the same
22 discipline as if they didn't use the device, what
23 incentive is there, other than you don't shoot your
24 partner, to use the device? We should incentivize the
25 use of the device. If there's an unintentional

1 discharge using the bullet trap, we should give a DCC
2 for that instead of a written reprimand.

3 Over several years we continued to have some
4 unintentional discharges in substations where instead of
5 using the bullet trap they used the ceiling or the wall
6 to capture those bullets. So I recommended at the time
7 to Chief Jacobs, it's time that we disincentivize the
8 lack of use of the trap, if you will, and departmentally
9 charge people. If the trap is available and they fail
10 to use it, that should be departmental charges. That's
11 currently how it's handled in the division. So ten
12 years ago, 12 years ago, when all unintentional
13 discharges were written reprimands, now if you make the
14 common sense decision to use the trap, it's DCC, and if
15 you intentionally fail to use the trap it's departmental
16 charges. We went both directions with that to try to
17 change that behavior.

18 **Q. Okay. Do you feel that was effective?**

19 A. They have slowed. I would like to see
20 unintentional discharges be a number of zero every year,
21 and that hasn't occurred, and we still have had people
22 not use the bullet trap. I wish I could say it's
23 completely changed behavior, but I can't -- for every
24 one that didn't occur I can't say that it's because of
25 what we did.

1 Q. Sure. Let's go back to this chain of command
2 review. What if the one member in the chain of command
3 disagrees with the -- say there's sergeant, lieutenant,
4 commander, deputy chief in the chain of command, am I
5 missing anybody?

6 A. Sergeant, lieutenant, commander, deputy chief.
7 That's correct.

8 Q. What if a lieutenant disagrees and everybody
9 else is in agreement, what happens?

10 A. The deputy chief is the decider unless there's a
11 disagreement with the board. So the deputy chief would
12 consider the disagreement of the lower ranking member of
13 the chain, and might meet with that person to discuss
14 and try to find out. Available to the deputy chief if
15 the person was just being grossly unreasonable, would be
16 to discipline the supervisor for making an unreasonable
17 recommendation, but if you and I just disagree on
18 whether the Browns are good or not, you know, a
19 reasonable disagreement can be had. So the deputy chief
20 is the ultimate decider.

21 Q. That's interesting. Tell me about the ability
22 to discipline a supervisor for making an unreasonable
23 conclusion.

24 A. That's really it in a nutshell. If they make an
25 unreasonable recommendation the person can be

1 disciplined.

2 **Q. What if the deputy chiefs finds the lieutenant**
3 **to have been unreasonable and recommend a written**
4 **reprimand, does that then start off a whole other**
5 **disciplinary process?**

6 A. It could.

7 **Q. That would be outside of the Firearms Review**
8 **Board investigation purview, correct?**

9 A. Correct.

10 **Q. Has that ever happened?**

11 A. I believe supervisors have been disciplined for
12 unreasonable recommendations in the past, but I can't
13 think of a particular issue.

14 **Q. Okay. What policies and procedures govern the**
15 **Firearms Review Board?**

16 A. The directives on the use of force; the
17 directives on the use of firearms, and the Firearm
18 Review Board SOPs. Additionally, I mean, we could get
19 into policies regarding what type of firearms you're
20 allowed to carry, et cetera. The board can find a
21 shooting outside of policy or make recommendations that
22 they find other policy violations other than just a
23 shooting. Like carrying the wrong weapon, which is just
24 an example. I'm not sure of it actually happening, but
25 they can point out other policy violations for the chain

1 to consider.

2 **Q. So the Firearms Review Board looks at violation**
3 **of all policies?**

4 A. They render their finding on whether the
5 shooting was in policy or not, but mixed into that are
6 considerations as to whether or not they did a policy
7 violation that contributed to the shooting or the death
8 being outside of policy.

9 **Q. Is there any other agency or board or**
10 **investigator that looks into violations of any other**
11 **policy?**

12 A. I don't understand the question.

13 **Q. Sure. So in an officer involved shooting the**
14 **Firearms Review Board reviews it to determine whether**
15 **the shooting itself was in policy, right?**

16 A. Yes.

17 **Q. And ancillary to that they could identify other**
18 **potential, any other violations of policy, but they**
19 **don't have to. They're not necessarily looking for**
20 **other policy violations, right?**

21 A. Yes.

22 **Q. So is there any other board or investigator or**
23 **anybody who looks specifically to identify whether there**
24 **were any other violations of policy?**

25 A. Regarding the use of deadly force, or regarding

1 the incident that gave rise to the use of deadly force?

2 **Q. Regarding the incident.**

3 A. Yes.

4 **Q. Who?**

5 A. If the incident involved a pursuit, the Pursuit
6 Review Committee would investigate whether the pursuit
7 was in policy or not within policy.

8 **Q. Okay. Any other examples?**

9 A. There are other boards throughout the division
10 that could come into play depending on the scenario,
11 however, I'm not familiar with one that I can think of
12 related to shootings recent or in my memory.

13 **Q. Can you see that?**

14 A. Yes.

15 **Q. For the record this is Columbus 011737 through**
16 **011744. I'm going to mark this as Exhibit 1.**

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 1 was marked for
19 identification.)

20 - - - -

21 BY MS. GELSOMINO:

22 **Q. What is this?**

23 A. That's the Firearms Police Involved Death Review
24 Board SOP effective as of January 2014.

25 **Q. Is that still effective or have there been any**

1 **revisions to that?**

2 A. I don't know.

3 **Q. Is this the SOP that ruled at the time of the**
4 **investigations and the review of the shootings in the**
5 **three cases that we're here to talk about today?**

6 A. Yes.

7 **Q. Okay. Are there any other written policies or**
8 **SOPs that specifically relate to the operation of the**
9 **Firearms Review Board?**

10 A. No.

11 **Q. Since 2005 how many times has the board and the**
12 **chain of command recommended to bypass progressive**
13 **discipline and file departmental charges?**

14 A. The board does not recommend discipline, so that
15 answer would be zero. The board not does issue or
16 recommend discipline. How many times since what year?

17 **Q. 2005.**

18 A. Have shootings been found to be not within
19 violation of policy, is that your question?

20 **Q. Sure.**

21 A. I have no idea.

22 **Q. Since 2005 how many times has the chain of**
23 **command recommended to bypass progressive discipline?**

24 A. For anything?

25 **Q. Anything in relation to a police involved**

1 shooting.

2 A. I have no idea.

3 Q. Since 2005 how many times has the chain of
4 command recommended to file departmental charges in
5 relation to a police involved shooting?

6 A. I don't know.

7 Q. You had access to the information to answer
8 those questions before you came to this deposition,
9 right?

10 A. No.

11 Q. Why not?

12 A. I didn't know what the questions would be. How
13 would I have answers to questions that I don't know?

14 Q. But you have access to the sources that could
15 give you the answers to the questions about the
16 discipline and recommendations of the board and the
17 chain of command, right?

18 A. Yes.

19 MR. PHILLIPS: Sarah, not to
20 interfere, but the notice wasn't that specific. He's
21 giving you a pretty comprehensive description of what's
22 in the Notice of Deposition in 7.)A.

23 MS. GELSOMINO: Part of this though,
24 Wes, is about the investigations, the findings, the
25 reviews and the outcome for all deadly force events from

1 2005 to the present. So that's exactly what I just
2 asked him and exactly what's in the deposition notice.

3 MR. PHILLIPS: Not to be difficult,
4 but he really has given you a great description of the
5 topics that you've asked for in 7.)A today. I'm not
6 sure -- I mean, short of an incredibly detailed Notice
7 of Deposition, I don't know what else he could do on
8 that.

9 MS. GELSOMINO: We're going to go
10 through it all, so that's fine. Let's go off the record
11 for a second.

12 - - - -

13 (Thereupon, an off-the-record discussion was held.)

14 - - - -

15 BY MS. GELSOMINO:

16 **Q. Okay. So for the nine members of the FRB does**
17 **that include the chairperson?**

18 **A. No.**

19 **Q. So it's the chairperson plus the nine members or**
20 **so?**

21 **A. Yes. The chairperson doesn't ever render**
22 **findings or isn't ever a reviewer. The chairperson only**
23 **oversees the nine.**

24 **Q. Okay. Thank you. What is the training, if any,**
25 **that the chairperson receives in order to qualify them**

1 to be in that position?

2 A. There is not.

3 Q. How about anywhere training for the members of
4 the FRB?

5 A. When I made a change and we updated the SOP in
6 2014 there, the version that you have, we did a -- we
7 had those existing board members sit in on a
8 conversation about what we were changing and how it was
9 being changed. Other than that there was no addition
10 training.

11 Q. Okay. All of the procedures and practices of
12 the FRB as you've described them to be today were the
13 same in 2015, 2016 and 2017, correct?

14 A. Yes.

15 Q. Everything that you've described to me was the
16 same as they were when the FRB considered the shootings
17 of England, Bell-McGrew and King, correct?

18 A. Yes.

19 Q. Okay. Thank you. Is there any like interplay
20 between FRB and flagging information for EARS?

21 A. Doing what for EARS?

22 Q. You know what EARS is, right?

23 A. Yes.

24 Q. Is there any information that is -- that the FRB
25 puts into EARS or like passes along to anyone to put

1 **into the EARS systems, or is there any interplay there**
2 **whatsoever?**

3 A. The board has nothing at all to do with that.
4 Certainly use of force is considered by EARS, and a use
5 of deadly force is a use of force. So there's
6 interplay, I guess, to use your words, but the board has
7 no piece in that process.

8 **Q. Does the chairperson of the board or anyone else**
9 **do anything to ensure that certain uses of force are put**
10 **into EARS?**

11 A. No.

12 **Q. Does the board track -- when I say, "the board,"**
13 **does that include the chairperson and the secretary and**
14 **the vice-chair?**

15 A. No. The board would not include the secretary,
16 because she's not a part of the board. But the
17 vice-chair is one of those nine, but generally the
18 vice-chair is the one that crafts the annual report.

19 **Q. With the assistance of the secretary, right?**

20 A. Right.

21 **Q. Does anyone on the board, the chairperson or the**
22 **secretary, track uses of deadly force by officer over a**
23 **number of years?**

24 A. No.

25 **Q. Why not?**

1 A. Because all of that information is captured by
2 Internal Affairs already. It would be redundant.

3 Q. Okay. Does anyone from the board, or the board
4 itself, the secretary, the chairperson, do anything to
5 watch trends in these zones where most of the use of
6 force is -- most of the firearms are being discharged?

7 A. That would be part of the statistical analysis
8 for the annual report, yes.

9 Q. And what's done with that information?

10 A. It's generally just recognized in the report of
11 what it is. It's more of an observation, I suppose. I
12 haven't seen it used as a specific piece of analysis to
13 make a change in decisions or a change in policy, or
14 influence decision-making.

15 Q. Okay. So those statistics have not been used to
16 identify any zones where particularly -- where officers
17 may be using more deadly force than in other zones?

18 A. It's self-evident, and the numbers are recorded
19 by zone and precinct, and they are kind of just
20 self-evident.

21 Q. Has the department ever used any of those
22 statistics regarding uses of force in particular zones
23 to change policies, or increase training, or change
24 training in those zones?

25 A. Not that I'm aware of.

1 MS. GELSOMINO: Wes, in terms of the
2 reports since 2005, I really don't want to go through
3 all of the reports right now if we don't have to, but
4 will you guys be challenging the admissibility of the
5 authenticity of those reports in any way?

6 MR. PHILLIPS: I doubt it. I would
7 have to see specifically what it is. We're pretty easy
8 to work with, Sarah. We don't jam up the other side.

9 MS. GELSOMINO: They're just the
10 reports that we've been talking about that are generated
11 each year in the FRB.

12 MR. PHILLIPS: Okay. And we provided
13 in part of discovery?

14 MS. GELSOMINO: Yeah.

15 MR. PHILLIPS: Okay. Then we're not
16 going to challenge those.

17 MS. GELSOMINO: Based on that
18 representation, then I'm not going to go through and ask
19 him to authenticate every one.

20 MR. PHILLIPS: Just so I'm clear,
21 specifically what documents are they?

22 MS. GELSOMINO: FRB reports.

23 MR. PHILLIPS: We won't challenge the
24 authenticity of them. We're not going to jam you up on
25 technicalities. We want to get to the actual substance

1 of the case. We may object to the relevance, but when
2 it comes to the authenticity, if we provided it, then
3 it's something that we're not going to challenge.

4 MS. GELSOMINO: Okay. Perfect. Thank
5 you.

6 BY MS. GELSOMINO:

7 **Q. Okay. I have reports up until 2017. Do you**
8 **know whether any report has been generated for 2018 or**
9 **'19?**

10 A. 2018 should be done. 2019 should be done, but I
11 don't know that for sure.

12 **Q. I noticed that they're done like a year -- well,**
13 **for a while they were done two years after the reports.**

14 A. Uh-huh.

15 **Q. And it seems like that time period has been**
16 **shortened. Why is there such a delay?**

17 A. Because for the majority of cases that occur in
18 a given year, the majority of the shootings of 2016
19 would not have been adjudicated either by the Grand Jury
20 or the board until sometimes middle or late 2017 or even
21 beyond. It's often a point of contention. Do we go
22 with what we have or do we wait until we have all the
23 information? Do we want to do a report that only
24 analyzes a portion of the shootings or do we want to
25 wait and do an analysis of all of the shootings? We've

1 generally erred on waiting and doing an analysis of all
2 the shootings, if possible.

3 **Q. Okay. Sometimes some of the shootings have not**
4 **been adjudicated at the time of the report, right?**

5 A. Correct.

6 **Q. Is there like an addendum, or are those**
7 **shootings later included somehow in the statistics?**

8 A. If I recall, the statistics are usually
9 included. It's just an analysis of what we can learn
10 from the summary or the actual cases itself. I believe
11 if it's in the Firearms Review Board process, not in the
12 Grand Jury process, that we would include the
13 statistics, date and time, number of shots fired, et
14 cetera. If it's still in the Grand Jury process that
15 information is not necessarily available to the board,
16 so it wouldn't be included. Regardless, the
17 investigation of the summary, or the analysis of the
18 summary of what caused the shooting will not occur until
19 it's completed. I believe the statistics that are known
20 are included.

21 **Q. When is that summary or analysis done? Is it**
22 **ever done?**

23 A. The ones that were concluded?

24 **Q. Yeah. Like when you did the 2012 report, for**
25 **example, and you did this in 2014 and there were some**

1 things that were still outstanding, are the things that
2 are outstanding ever included in any kind of an
3 analysis?

4 A. I don't believe so.

5 Q. There's no follow-up done?

6 A. No.

7 Q. Why not?

8 A. I don't know.

9 Q. Do you agree that that could be potentially
10 important information that the department is missing out
11 on because these cases are not being included in the
12 analysis?

13 A. To the point that you qualify with potentially,
14 sure.

15 Q. Okay. How many annual reports have you drafted
16 yourself?

17 A. I don't know.

18 Q. You started there in 2012, right, as the
19 chairperson?

20 A. 2012 or early 2013, yes. It might have been
21 '13.

22 Q. Have you ever sat on the actual board?

23 A. Yes. As a commander.

24 Q. And when was that?

25 A. 2010 until 2012.

1 Q. Okay. And then after that point you were not a
2 reviewer, you were just the chairperson?

3 A. Correct.

4 Q. Okay.

5 A. That's another example of when somebody who
6 responded won't be the writer. They get promoted out of
7 the position. So I was a responder on several cases in
8 2012, but was promoted in 2012, therefore I did not sit
9 on or write that review.

10 Q. Okay. That makes sense. While you were a
11 reviewer or responder did you ever find any of the cases
12 that you looked into to be intentional and out of
13 policy?

14 A. I don't believe so.

15 Q. Okay. I know that you authored the report in
16 2014 regarding 2012. Do you recall ever authoring any
17 other reports?

18 A. I don't believe so. I believe after that report
19 I assigned it to a vice-chairperson to craft going
20 forward.

21 Q. Lang, right?

22 A. It's currently Lang. It was not Lang at the
23 time.

24 Q. Okay. I'm going to show you an FRB log for
25 2005. Can you see that?

1 A. Yes.

2 Q. Okay. I'm going to mark this as Exhibit 2.

3 - - - -

4 (Thereupon, Plaintiff's Exhibit 2 was marked for
5 identification.)

6 - - - -

7 BY MS. GELSOMINO:

8 Q. Is this the spreadsheet that you were talking
9 about earlier that the board secretary maintains?

10 A. Yes.

11 Q. Have you ever seen this document before?

12 A. I've seen it before. I've not spent time with
13 it.

14 Q. Okay. This is like -- investigation register
15 it's called, is the best places for us to look at for
16 all the reviews done by FRB, correct?

17 A. Yes.

18 Q. Along with the findings?

19 A. Yes.

20 Q. Okay. So I understand that you haven't spent a
21 lot of time with this before, but what I want to do is
22 look through this document and a number of others to
23 discuss any that were found outside of policy. So in
24 2005 on this first page that we're looking at all of the
25 reviews were found to be within policy, correct?

1 A. Yes.

2 Q. Based on this there was no way to tell whether
3 or not it was a fatal shooting, right?

4 A. Based on this, no.

5 Q. If I wanted to get more information about any
6 one of these individual incidents, where would I look?

7 A. Internal Affairs.

8 Q. Okay. At what point does it go to Internal
9 Affairs?

10 A. Once the chain of command -- after discipline is
11 done or if it's found to be within policy, reasonably
12 soon after they're done with the chain of command.

13 Q. What does Internal Affairs do with it?

14 A. Files it.

15 Q. They just hold it? They don't take any further
16 action?

17 A. No.

18 Q. Okay. I'm going to go to the second page of
19 this five page document. I see one that was not within
20 policy here, which is in red. Do you see that?

21 A. Yes.

22 Q. That was for an accidental shooting, right?

23 A. That's what it reads, yes.

24 Q. Do you know any of the details of this
25 particular incident?

1 A. No. I was a sergeant at the time. I don't know
2 anything about that.

3 Q. Okay. A written reprimand in 2005, was that the
4 discipline that was automatically given for accidental
5 discharges?

6 A. That was the normal course of practice. It
7 wouldn't be automatically given, but that's the standard
8 discipline.

9 Q. Okay. The bottom entry here on the right it
10 says "did not involve division issued firearm or
11 personal firearm approved for off-duty use. Not a
12 matter for Firearms Review Board." Why would a
13 discharge not be a matter for the Firearms Review Board?

14 A. Your question is not reflective of what happened
15 here. You asked why a discharge would not go to the
16 board. I don't know if a case that's a discharge would
17 not go to the board. This doesn't say it was a
18 discharge.

19 Q. Well, explain this to me, then. Do you know
20 what happened here?

21 A. I have no idea.

22 Q. Is there any time that something that's not a
23 firearms discharge wouldn't go to the board?

24 A. Yes.

25 Q. When?

1 A. You keep referencing it as the Firearms Review
2 Board. It's the Firearms Death Review Board. An
3 in-custody death would go to the board. We had a case
4 that I reviewed as a commander where an officer tried to
5 run a person over on purpose with their car, and
6 actually did run them over with a car, with the intent
7 of using that as a use of force. So that would not be a
8 discharge of a firearm.

9 Q. Okay. In that case though someone died, right?
10 The car that you just told me about?

11 A. It's complicated, but yes.

12 Q. Okay. Either way, you don't know what this last
13 entry is, right?

14 A. I do not.

15 Q. Moving onto the third page then, there's another
16 accidental discharge that's not within policy. There's
17 actually three not within policies on this page, and all
18 three of these are accidental discharges, correct?

19 A. That's correct.

20 Q. On page four there's an additional accidental
21 discharge that was found not within policy?

22 A. Yes.

23 Q. And then there's one other incident that was
24 found not within policy, right?

25 A. That's correct.

1 Q. Do you understand what this entry means here,
2 "not within policy, JGJ"?

3 A. James G. Jackson.

4 Q. Who is that?

5 A. The chief of police at the time.

6 Q. What does this entry mean to you?

7 A. I have some vague knowledge of that case. I
8 believe it was found to be not within policy, and at the
9 director's level there was no suspension, I don't
10 believe, out of that case. I believe that they were
11 referred for additional training and that was it.

12 Q. What do you know about the facts of this case?

13 A. I know it occurred at the Continent after a bar
14 closing, and I believe a car attempted to run over some
15 of the officers or the patrons, I forget which, and I
16 believe those officers fired at that car, at the driver.
17 I was not involved in that case. It was just what I
18 heard around the division.

19 Q. Okay. Do you know what the basis of the finding
20 that the shooting was not within policy was?

21 A. I do not.

22 Q. How can I figure out what the basis of that
23 finding was?

24 A. You could get the original shooting package
25 probably from Internal Affairs. I don't know if the

1 discipline is still on file or not. There are
2 contractual notations on how long the discipline can be
3 kept, but I would start with Internal Affairs. Any
4 public records request to ask for that information and
5 we can figure out where it is.

6 Q. Okay. So in 2005, of all of the shootings that
7 were found to be not within policy, there was only one
8 that was not an accident, right?

9 A. According to this log. I can't speak to that
10 personally, but according to this log.

11 Q. And you have no reason to believe that this log
12 would be incorrect, right?

13 A. I do not.

14 Q. Or incomplete?

15 A. I do not.

16 Q. Okay. This is going to be a bit tedious, but
17 we're going to do this for the remainder of the years
18 that you're here to testify about today. Okay?

19 A. Okay.

20 Q. In 2006, which I'll mark as Exhibit 3.

21 - - - -

22 (Thereupon, Plaintiff's Exhibit 3 was marked for
23 identification.)

24 - - - -

25 BY MS. GELSOMINO:

1 Q. This is the 2006 investigative register. Here
2 there's one on the first page. There's one not within
3 policy, and again, that's an accidental shooting,
4 correct?

5 A. Yes.

6 Q. Now, there's another down here that says "within
7 policy," again, with the initials of the chief of
8 police. Why would the initials of the chief of police
9 be on this particular within policy finding and not on
10 others?

11 A. I don't know.

12 Q. On this register is there any way to determine
13 whether there was a disagreement between the board and
14 the chain of command and the chief?

15 A. It does not appear so.

16 Q. The policy decision, whose decision is that
17 referencing?

18 A. The final decision-maker, I would assume.

19 Q. Okay. So in order to look to determine whether
20 or not there was some disagreement or different finding
21 at some point, how would we do that?

22 A. We'd have to pull the original findings letter
23 from the board.

24 Q. Okay. Since 2005, how many times has the chain
25 of command disagreed with the recommendations of the

1 board?

2 A. I'm sorry. I don't know.

3 Q. Since 2005, how many times has the chief of
4 police disagreed with the findings of the board, the
5 recommendations of the board?

6 A. I don't know.

7 Q. Do you know how many times the chief of police
8 has disagreed with the findings of the chain of command?

9 A. I don't know.

10 Q. When you were the chairperson, during the years
11 that you were the chairperson, how many times did the
12 chief disagree with the findings of the chain of
13 command?

14 A. I don't know.

15 Q. Do you know how many times the chain of command
16 disagreed with the recommendations of the board while
17 you were the chairperson?

18 A. I don't know.

19 Q. All right. Let's look at page two of the 2006
20 register. There's only one finding here that's not
21 within policy and that's, again, accidental, correct?

22 A. Yes.

23 Q. On the third page there's two not within policy
24 findings and both of those are accidental, correct?

25 A. Yes.

1 Q. On the fourth page, again, the only not within
2 policy finding is accidental?

3 A. Yes.

4 Q. And on the fifth page, the final page, there are
5 four finding not within policy and they're all
6 accidental, correct?

7 A. Yes.

8 Q. So the only firearms discharges that were found
9 to be not within policy during 2006 were all accidental
10 discharges, right?

11 A. Yes.

12 Q. Everything else was found to be within policy,
13 correct?

14 A. Yes.

15 Q. All right. Here's the 2007 log. This is that
16 same log from the year of 2007, right?

17 A. Yes.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 4 was marked for
20 identification.)

21 - - - -

22 BY MS. GELSOMINO:

23 Q. And there's no reason to believe that this is
24 missing anything or is incorrect in any way?

25 A. I don't believe so.

1 Q. So on page one the only not within policy was
2 accidental?

3 A. Yes.

4 Q. On page two there's one accidental that's found
5 not within policy, but then there's also another
6 incident here. Do you see this, involves Randy Valiski?

7 A. Yes.

8 Q. Do you understand what this is saying about the
9 final decision?

10 A. Yes.

11 Q. Can you explain that to me, please?

12 A. I can surmise. I'm not familiar with the case.
13 It appears that -- based on that record it appears there
14 was two shots. One shot is found within policy, one not
15 within policy, and then eventually found to be within
16 policy by Chief Jackson.

17 Q. So, this looks like the chief then found that
18 both the shots were within the policy?

19 A. That's what I would surmise from that entry.

20 Q. So, this would be an example of a time that the
21 chief disagreed with the conclusions of the review
22 board, correct?

23 A. Maybe.

24 Q. Is there another option?

25 A. The other option is that, again, if there's a

1 agreement between the deputy chief and the chief, it
2 goes to the chief. I can't from this show where the
3 disagreement was.

4 **Q. Okay. Because you don't know who this**
5 **finding -- who made this initial finding?**

6 A. I don't know if Chief Jackson disagreed with the
7 board or with the chain of command. I can't tell from
8 that entry, but to get to the chief there was a
9 disagreement.

10 **Q. And the chief then found it within policy?**

11 A. Correct.

12 **Q. Got it. On the next page everything that was**
13 **found not within policy was an accident, right?**

14 A. Yes.

15 **Q. On the fifth page, again, everything that was**
16 **found not to be within policy was an accidental**
17 **shooting, correct?**

18 A. Yes.

19 **Q. And the last page, again, just an accidental**
20 **shooting, right?**

21 A. Yes.

22 **Q. In 2007 then, the only firearms discharges that**
23 **were found to be not within policy were accidental**
24 **discharges, correct?**

25 A. Yes.

1 Q. Okay. This is the 2008 log, which will be
2 Exhibit 5.

3 - - - -

4 (Thereupon, Plaintiff's Exhibit 5 was marked for
5 identification.)

6 - - - -

7 BY MS. GELSOMINO:

8 Q. Again, there's no reason to believe that this
9 log would be incorrect or incomplete somehow, right?

10 A. No.

11 Q. And all of this not within policy on the first
12 page were accidental?

13 A. Yes.

14 Q. Same with the second page, the only not within
15 policy was accidental?

16 A. Yes.

17 Q. The next not within policy that's on page four
18 is also accidental, right?

19 A. Yes.

20 Q. There is one here that looks like it was an
21 intentional shooting on page five that was not within
22 policy where a reprimand was issued. Do you know
23 anything about this case?

24 A. I do not.

25 Q. Otherwise everything else was accidental,

1 **correct?**

2 A. Yes.

3 **Q. Do you know anything about this case on page**
4 **six, which included Christopher Boyle that was found not**
5 **within policy and there's a note about training, do you**
6 **know anything about that case?**

7 A. Maybe.

8 **Q. Tell me what you know.**

9 A. I believe that case involved the officer firing
10 at that suspect from what the chain of command
11 determined, or the board determined to be an excessive
12 distance. That the use of force was objectively
13 reasonable from a force perspective, but outside of
14 policy because it was simply too long of a shot.

15 **Q. Okay. What does the training here indicate?**

16 A. I think it was just referencing that it went
17 back to discuss considering the length of the shot
18 you're taking before you take the shot basically.

19 **Q. Was there any discipline issued or just some**
20 **training?**

21 A. I don't know.

22 **Q. Otherwise, here on page seven the only finding**
23 **of not within policy and discipline are accidental**
24 **shootings, right?**

25 A. The top one says "departmental charges." I

1 don't know what that references.

2 Q. Okay. Thank you. Back to page six, there was
3 one finding here of not within policy, which includes
4 Robert Altherr, A-L-T-H-E-R-R. Do you know anything
5 about that shooting?

6 A. I do not.

7 Q. Do you know what happened with those
8 departmental charges?

9 A. I do not.

10 Q. Do you know whether there was any discipline?

11 A. I do not.

12 Q. Page eight, another accidental shooting is the
13 only discipline, right?

14 A. Yes.

15 Q. Other than that there was no -- every other
16 shooting or discharge in 2008 was found to be within
17 policy and there was no discipline for it, correct?

18 A. Correct.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 6 was marked for
21 identification.)

22 - - - -

23 BY MS. GELSOMINO:

24 Q. Okay. Here is the log for 2009. Raccoons have
25 their own column here. Are there a lot of raccoons shot

1 **by officers?**

2 A. We only had it listed by animal generally. I
3 think it was an attempt to spread it out to add
4 additional animals. There's only one or two perhaps on
5 that sheet probably.

6 Q. Okay. So on page one of the 2009 review there's
7 only one incident where something was found to not be
8 within policy and discipline was issued, and that was
9 for an accidental discharge, right?

10 A. Yes.

11 Q. On page two, again, it's just accidental
12 discharges that are disciplined?

13 A. I can't see the columns again. I didn't
14 memorize the columns.

15 Q. The middle column here is accidental.

16 A. Then, yes.

17 Q. On the third gauge, again, only the accidental
18 discharge is disciplined?

19 A. Yes.

20 Q. On page four, again, the only discipline is
21 accidental?

22 A. Yes. That was the case that I had the policy
23 change with the DCC. That was the case that I
24 referenced.

25 Q. Okay. So less discipline at this point?

1 A. Yes.

2 Q. Okay. Thank you for noting that. Again, on
3 page five the only shooting that was found to be not
4 within policy for which discipline was given were
5 accidental shootings, right?

6 A. Yes.

7 Q. Again, on page six?

8 A. Yes.

9 Q. Okay. So in 2008 then, the only shootings that
10 were found to be not within policy were accidental
11 discharges?

12 A. Yes.

13 Q. Okay. Remember the accidental one is the third
14 column here.

15 A. Yep.

16 Q. This is the 2009 log.

17 A. We just did the 2009.

18 Q. Okay. So that would have been Exhibit 6. Thank
19 you. Here's 2010, which will be Exhibit 7.

20 - - - -

21 (Thereupon, Plaintiff's Exhibit 7 was marked for
22 identification.)

23 - - - -

24 BY MS. GELSOMINO:

25 Q. So here for the log on 2010, there on the first

1 page there's this finding here that says "within policy
2 per chief," and that relates to a shooting where Officer
3 Ryan Rosser was involved. Do you know anything about
4 that case or why the chief found it to be within policy?

5 A. I do not.

6 Q. Okay. I'm just going to flip through this and
7 tell me if every time that a person -- strike that. In
8 2010, was any discharge found to be not within policy
9 other than an accidental shooting? Just tell me when
10 you want me to flip through the pages.

11 A. Flip. Flip. Flip. Flip. Flip. Flip. Flip.
12 Flip.

13 Q. These are different investigations, right?
14 They're not firearms?

15 A. Correct.

16 Q. Okay. So of the firearm discharges in 2010 was
17 anything found to be not within policy that was an
18 intentional discharge?

19 A. No.

20 Q. Okay. We'll do it the same way for this one.
21 We'll flip through this document, which is Exhibit 8,
22 the 2011 log for the FRB. Was any intentional firearms
23 discharges found to be outside of policy in 2011?

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 8 was marked for

1 identification.)

2 - - - -

3 A. Flip. Flip. Flip. Flip.

4 BY MS. GELSOMINO:

5 Q. That's it.

6 A. No.

7 Q. All right. This is the log for 2012, which I'll
8 mark as Exhibit 9.

9 - - - -

10 (Thereupon, Plaintiff's Exhibit 9 was marked for
11 identification.)

12 - - - -

13 BY MS. GELSOMINO:

14 Q. This seems to have more information on it. Did
15 you have anything to do with changing this log?

16 A. No. Not in 2012.

17 Q. In 2012 you were part of the FRB, right?

18 A. It would have been the last month or two or
19 early 2013. I was promoted to Deputy Chief in October
20 of that year.

21 Q. Remind me though, it was for what years? When
22 were you on the board itself as a reviewer?

23 A. 2010 to 2012 as a reviewer.

24 Q. Okay. Did you ever come to a conclusion or make
25 a recommendation as a reviewer or a responder that was

1 later disagreed with by the chain of command or the
2 chief?

3 A. As a reviewer or responder, I don't believe so.

4 Q. Okay.

5 A. As a board reviewer? As the chain of command,
6 yes, but not as a board reviewer.

7 Q. Yeah. As a board reviewer.

8 A. No.

9 Q. Tell me about when that happened as a chain of
10 command reviewer.

11 A. It would be the one that you're deposing me
12 about, England.

13 Q. Okay. Any time other than that?

14 A. I don't believe so.

15 Q. Okay. So for 2012, this is the column for
16 accidental shootings here, the third column in. And
17 this second column from the right is not within policy.
18 Got it? It's a littler harder for me to read.

19 A. Yes.

20 Q. On this page, on page one, the only times that a
21 discharge was found not to be within policy were, again,
22 accidental discharges, correct?

23 A. Correct.

24 Q. Let's just flip through the rest of the document
25 and you can let me know if there was ever any time that

1 **an intentional discharge was found not to be within**
2 **policy, okay?**

3 A. 2012-21 has one of those comments within policy
4 per Chief Jacobs, so I would assume there was a
5 disagreement at some point.

6 **Q. Okay. Do you know anything about that case?**

7 A. I do not.

8 **Q. You don't know why Chief Jacobs would have come**
9 **to that conclusion?**

10 A. I have no idea.

11 **Q. Okay. Any time here in 2012 --**

12 A. No.

13 **Q. Okay. Next page?**

14 A. No. Notice the bottom one says the Firearms
15 Review Board not within policy. Chain of command not
16 within policy. Deputy chief though disagreed with the
17 board, and it was found within policy per the chief.

18 **Q. Okay. So and we're looking at the last entry**
19 **here, which the officer involved is Ryan Steele, right?**

20 A. Uh-huh.

21 **Q. Is that a yes?**

22 A. Yes. I'm sorry.

23 **Q. You're fine. In this case is the deputy chief**
24 **not considered part of the chain of command?**

25 A. Yes. The deputy chief is considered part of the

1 chain of command.

2 Q. So where it says "COC, chain of command, not
3 within policy," that's basically everyone up until the
4 deputy chief found it to be within policy and the deputy
5 chief disagreed?

6 A. Correct.

7 Q. And why would that go to the chief again?

8 A. Because it's a disagreement between the deputy
9 chief and the Firearms Review Board.

10 Q. Okay. You don't know any facts of this case?

11 A. I believe I was the deputy chief in that case.

12 Q. Okay. Then tell me what you know about this
13 case.

14 A. I don't recall what the distinction with the
15 board was. I believe it involved special duty officers
16 working at a bar and I believe that they were shot at
17 perhaps -- were they shot at or did somebody try to
18 drive over then? I believe in that case the use of
19 deadly force was objectively reasonable towards the
20 suspect, however, I think a ricochet struck a civilian
21 injuring the civilian. And if I recall correctly, the
22 board found backdrop issue to be a problem because of
23 that injury, but I, if I recall, found the use of force
24 to be objectively reasonable and that the backdrop issue
25 was beyond their -- I didn't find the backdrop to be

1 unreasonable as the board did.

2 **Q. Why not?**

3 A. It was six years ago. I don't recall the
4 specifics.

5 **Q. Okay. Did you write anything out describing the**
6 **reasoning for your findings here?**

7 A. Probably not, but I don't recall.

8 **Q. Would this have gone to hearing with the chief?**

9 A. Not necessarily, no.

10 **Q. Did you speak to the chief directly about this?**

11 A. Yes.

12 **Q. What was that conversation?**

13 A. I don't recall.

14 **Q. Okay. So in the end you disagreed with the**
15 **chain of command and the Firearms Review Board. The**
16 **chief agreed with you and there was no discipline,**
17 **right?**

18 A. Correct.

19 **Q. Okay. So moving onto page five.**

20 A. Those are all accidentals and that's it.

21 **Q. Okay. There is one here, Billy Camp-Donavon.**

22 A. Yes. I spoke about that one to you earlier.

23 **Q. Remind me what it is.**

24 A. She fired at a fleeing murder suspect in his car
25 and it was objectively reasonable criminally, but not

1 within policy.

2 Q. What happened here with the departmental
3 charges, do you recall?

4 A. She served a suspension. I don't recall for how
5 many hours.

6 Q. Okay. On page six the only findings that were
7 not within policy were accidental, right?

8 A. Correct.

9 Q. Okay. The next page Anthony Sebastiano.

10 A. Yes.

11 Q. It looks like an accidental shooting that was
12 not within policy and departmental charges were issued.
13 Do you know anything about that case?

14 A. I do not.

15 Q. Do you know whether there was any kind of
16 disagreement among any of the reviewing parties?

17 A. I don't know.

18 Q. Do you know what happened?

19 A. I don't.

20 Q. Okay. There are two other accidental discharges
21 on this that received discipline, right?

22 A. Yes.

23 Q. And then there was one other intentional
24 shooting that was not within policy but there was no
25 discipline issued. The second from the bottom. Paul

1 **Fetter.**

2 A. Yes. Probably. You say "shooting," I don't
3 know if it was a shooting. It could have been another
4 alterative death review of some sort. I don't know.

5 **Q. Okay. Do you know why there would be no**
6 **discipline even though the finding was that his actions**
7 **were not within policy?**

8 A. This one -- is 4077 Carl Road a school? Do we
9 have access to a Google map? This might be a case that
10 lead to changes in the '14 SOP. There were changes
11 because -- I think 4077 Carl might be a Columbus City
12 School, and if it is, that was a case that gave rise to
13 a lot of changes to the '14 SOP.

14 **Q. What's the '14 SOP?**

15 A. The 2014 SOP revisions that you referenced
16 earlier. The Firearms Review Board SOP, the 2014
17 revision, that's what I'm referring to.

18 MR. PHILLIPS: Not to interrupt the
19 deposition, but I just checked. It is a school.

20 MS. GELSOMINO: Thanks.

21 A. Okay. So to that point, that was an accidental
22 discharge because the officer was responding to a
23 burglary alarm. There were suspects inside the building
24 and he had drawn his firearm at one of the suspects
25 inside the building, the suspect's co-suspect came

1 running out of a room crashing next to the officer
2 causing the firearm to discharge. And we said, you
3 cannot accidentally discharge a firearm and have it be
4 within policy because our policy is that all discharges
5 will be intentional, so we found it technically to be
6 not within policy, no discipline, because the officer
7 wasn't negligent. It wasn't the officer's fault. The
8 officer couldn't have avoided what happened. It was
9 caused by the actions of the other suspect. So as a
10 result of that we made changes to the wording in the
11 2014 SOP and the findings.

12 **Q. Okay. Moving on to page eight. Again, the only**
13 **discipline that was issued was for accidental**
14 **discharges, right?**

15 A. Yes.

16 **Q. For the top here, Craig Gibson, why would**
17 **departmental charges be lodged for an accidental**
18 **discharge?**

19 A. Two reasons. One pursuant to progressive
20 discipline, they had it written before. Or -- I don't
21 think this is the case in this one, but, or you did not
22 use the bullet trap, if you remember.

23 **Q. Oh, right.**

24 A. I suspect based on the address of this one,
25 South 6th Street. That's a substation there. So I'd

1 guess that's pursuant to the progressive discipline.

2 Q. Okay. Page nine everything was found within
3 policy. Page ten there's one found outside of policy.
4 Again, that's an accident, right?

5 A. Yes.

6 Q. And that's the same for the final page, right?

7 A. Yes.

8 Q. Every other intentional shooting was found to be
9 within policy in 2012?

10 A. Yes.

11 Q. Okay. Now, I'm going to show you the FRB log
12 for 2013, and this is Exhibit 10.

13 - - - -

14 (Thereupon, Plaintiff's Exhibit 10 was marked for
15 identification.)

16 - - - -

17 BY MS. GELSOMINO:

18 Q. This one is nice and color coded now for us. I
19 believe in 2013 that all but one of the shootings that
20 were found to be not within policy were related to
21 accidental discharges. So I want you to go through this
22 document and tell me if that's accurate.

23 A. Okay. Flip. The first one looks to be a
24 suspect and not within policy.

25 Q. That's one, and everything else is accidental,

1 **right?**

2 A. Yes. Same for that page, one accidental. Flip.
3 Wait a minute. Two accidentals.

4 **Q. Two accidentals, and everything else was within**
5 **policy?**

6 A. Yes. Flip. One accidental not within policy.
7 Flip. One accidental not within policy. I'm sorry. Go
8 back. There's two actually. The one on the bottom.
9 Same.

10 **Q. Both accidental. Okay.**

11 A. Same. Flip. No outside of policy. No outside
12 of policy. No outside of policy. Going forward, as I
13 understand, I'm to answer your questions, so I prefer
14 that you start phrasing them as questions as opposed to
15 this general flip and comment.

16 **Q. So this is my question: In 2013, is it accurate**
17 **to say that all but one of the shootings that were found**
18 **to be not within policy were related to accidental**
19 **shootings?**

20 A. Yes.

21 **Q. Okay. And the reason I'm having you do this**
22 **flip thing is so we don't have to go through**
23 **page-by-page. I'm just going to pose the question and**
24 **have you look through the document. Okay?**

25 A. And I understand, but I'm not making tally marks

1 to remind myself what the numbers are. We get to the
2 end and you asked me if there's one, two or three, and I
3 may not remember.

4 Q. Okay. Well, in this case there was one?

5 A. Yes.

6 Q. One intentional shooting in 2013 that was found
7 to be outside of policy that was not an accident, right?

8 A. Yes.

9 Q. And do you know -- so we're looking at that
10 right now at the top of the page, and the officer
11 involved is Timothy Maclellan, M-A-C-L-E-L-L-A-N. Do
12 you know anything about this case?

13 A. I don't recall anything about that case.

14 Q. Do you know whether there was any disagreement
15 among any of the reviewers or the chief?

16 A. I don't know.

17 Q. Were you involved in this review at all?

18 A. I don't recall.

19 Q. In 2013 it's possible that you weren't, right,
20 because you weren't the chairperson at the time?

21 A. Well, I was the patrol deputy chief, so it's
22 possible that I was. I don't recall.

23 Q. Okay. Do you know what happened to this
24 disciplinary charges?

25 A. I do not.

1 Q. Okay. I'm going to show you now the FRB log for
2 2014. Again, there was a change here, so this is going
3 to be Exhibit 11.

4 - - - -

5 (Thereupon, Plaintiff's Exhibit 11 was marked for
6 identification.)

7 - - - -

8 BY MS. GELSOMINO:

9 Q. Can you explain what this means now? The final
10 policy decision has an option of unintentional and
11 negligent.

12 A. That appears to be an attempt by the secretary
13 who created this log to reflect those four changes in
14 2014. It doesn't entirely accurately reflect those.
15 That's what that is.

16 Q. Okay. So unintentional and negligent would mean
17 accidental and outside of policy?

18 A. Unintentional is the correct word. We stopped
19 using the word accidental and use unintentional. Not
20 negligent would be not in violation of policy. Not
21 negligent would be not in violation of policy, negligent
22 would be in violation of policy.

23 Q. Okay. So whereas in previous years we were
24 seeing accidental and not within policy, now that type
25 of action would be indicated here where it says,

1 "unintentional and negligent," right?

2 A. Yes.

3 Q. Okay. So then on page one, the only time that
4 anything was found to be not within policy or negligent
5 was related to an unintentional discharge, correct?

6 A. Correct.

7 Q. Do you see where those columns are here in the
8 first page?

9 A. Yes.

10 Q. We're going to do our best here. On page two it
11 looks like both of the times that something was found
12 not to be within policy was an unintentional discharge,
13 right?

14 A. Yes.

15 Q. Same on page three?

16 A. Yes.

17 Q. Now, on page four I see this one here, so I'm
18 just going to go up to the first page and check what
19 that is. This unintentional -- on page four there's one
20 shooting, Richard Mays was involved, which was
21 unintentional and negligent, but there's no discipline
22 noted. Do you know why that would be?

23 A. I don't.

24 Q. Do you recall this incident at all?

25 A. I do not.

1 Q. Okay. On page five the only time that anything
2 was disciplined was an unintentional and negligent
3 shooting, right?

4 A. Yes.

5 Q. Same for page six?

6 A. Yes.

7 Q. Okay. And that's it for this year. So in 2014
8 then, the only time that any discipline was given or any
9 firearms discharge was found not to be within policy was
10 related to an accidental or unintentional shooting,
11 right?

12 A. Right.

13 Q. We're almost done. So 2015 you were the
14 chairperson, right?

15 A. Yes.

16 Q. So on the first page of this all of the
17 discharges were found to be within policy and were not
18 disciplined, right?

19 A. I can't see anything on the screen.

20 Q. Oh, I'm sorry. This is Exhibit 12, the 2015
21 log.

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 12 was marked for
24 identification.)

25 - - - -

1 BY MS. GELSOMINO:

2 Q. On the first page of this 2015 log everything
3 was found to be within policy, correct?

4 A. Yes.

5 Q. On page two every shooting was found to be
6 within policy?

7 A. Yes.

8 Q. On page three every shooting was found to be
9 within policy?

10 A. The ones with findings, yes.

11 Q. Why would there be some without findings on
12 this?

13 A. I don't know.

14 Q. Moving on to page five, there's one found to be
15 intentional and not within policy, the second column
16 right here, right?

17 A. Can you go back to that page?

18 Q. Yeah.

19 A. That's correct.

20 Q. Okay. So do you know anything about this,
21 involving Officer Jonathan Thomas?

22 A. I do.

23 Q. Tell me about it, please.

24 A. The officer was at a home following up on a
25 hit-skip accident and while speaking to the family

1 members a pitbull came out and tried to bite him, and he
2 fired one round at the pitbull and he unfortunately
3 missed the pitbull and unfortunately struck a small
4 child in the leg.

5 **Q. What happened to the child?**

6 A. She was injured.

7 **Q. What kind of injuries?**

8 A. A gunshot wound to the leg.

9 **Q. Did she have any permanent injuries?**

10 A. I don't know.

11 **Q. What was the discipline in this case?**

12 A. He was departmentally charged, and I believe he
13 either served a suspension or was given a leave
14 forfeiture option. I don't remember which.

15 **Q. Do you know whether there was any like**
16 **disagreement among any of the reviewing parties in this**
17 **case?**

18 A. I believe there was disagreement, yes, but I
19 don't know if it was within the chain or between the
20 chain and the board. I don't remember which.

21 **Q. Were you involved at all in the review of this?**

22 A. I was the deputy chief at the time, yes.

23 **Q. What were your conclusions?**

24 A. That it was outside of policy.

25 **Q. Based on what?**

1 A. Backdrop. He shouldn't have taken that shot
2 with the girl in the background.

3 Q. Which policy would that be in violation of?

4 A. Use of firearms.

5 Q. Okay. Did you believe that he was justified in
6 discharging his weapon?

7 A. No.

8 Q. Even though the dog was there?

9 A. I'm sorry. Is that a question?

10 Q. Yeah. I mean, what did you base your conclusion
11 on that he was not justified in actually firing his
12 weapon?

13 A. That the danger to others was a greater risk
14 than the danger to himself.

15 Q. Okay. On page five here's there's a shooting
16 with Matthew Gasaway. Do you know what that was about?

17 A. I believe there was an accidental discharge.

18 Q. So this is, again, an accidental discharge and
19 that's the only time that a shooting on page five was
20 found to be within policy, correct?

21 A. Correct.

22 Q. On page six every shooting was found to be
23 justified and within policy?

24 A. Yes.

25 Q. And same for on page seven, the remainder of the

1 discharges were found to be justified and within policy,
2 correct?

3 A. Yes.

4 Q. Okay. Thank you. Now we're going to look at
5 2016 which is Exhibit 13.

6 - - - -

7 (Thereupon, Plaintiff's Exhibit 13 was marked for
8 identification.)

9 - - - -

10 BY MS. GELSOMINO:

11 Q. Take a minute to orient yourself with this. On
12 page one all of the discharges were found to be within
13 policy and justified, correct?

14 A. Yes.

15 Q. On page two one shooting was found to be
16 unintentional and not negligent. What does that mean?

17 A. Unintentional not in violation of policy.

18 Q. Do you know what that case was about?

19 A. I don't.

20 Q. Okay. But it was an accidental discharge again,
21 right?

22 A. Unintentional, yes.

23 Q. On the top one on page three includes Eric
24 Poehler. Do you know what happened with that case?

25 A. That was another unintentional discharge at the

1 substation. That might be out of the column.

2 Q. But that, again, was an unintentional discharge?

3 A. Yes.

4 Q. So both of the discharges that were found to be
5 not within policy for which discipline was given on this
6 page were both, again, unintentional or accidental
7 discharges, right?

8 A. Correct.

9 Q. On page four there's a shooting here in blue.
10 The officer is Lee Hurst. Do you know what that was
11 about?

12 A. I do.

13 Q. Tell me about that, please.

14 A. The officer was working special duty and he
15 heard shots fired in his direction from a treeline. I
16 believe the shot or shots he said he could hear them
17 whiz past his head from the treeline if I recall
18 correctly, and he returned fire in the direction of the
19 treeline.

20 Q. And that was found not to be within policy?

21 A. Correct.

22 Q. But there was no discipline noted here. Do you
23 know whether he was disciplined?

24 A. I don't know.

25 Q. If there's a reason why someone would not be

1 disciplined if a person discharged a firearm in a way
2 that was found not to be within policy?

3 A. Mitigating circumstances may present itself to
4 the point where you're not going to issue discipline.

5 Q. But you don't know what happened here?

6 A. I don't know this issue, no.

7 Q. Otherwise on this page, page five, the other
8 times that a shooting was found to be not within policy
9 were related to unintentional discharges, right?

10 A. Correct.

11 Q. Same for page six, all of the discharges found
12 to be not within policy are related to unintentional
13 shootings?

14 A. Correct.

15 Q. And same for page seven, right?

16 A. Yes.

17 Q. Okay. I'm going to show you 2017, and that's
18 the last one that I'm going to show you. 2017 Firearms
19 Review Board log.

20 - - - -

21 (Thereupon, Plaintiff's Exhibit 14 was marked for
22 identification.)

23 - - - -

24 BY MS. GELSOMINO:

25 Q. On page one every discharge was found to be

1 **intentional and not in violation of any policy, right?**

2 A. Accept for one that has no findings, correct.

3 **Q. Do you know why that has no findings?**

4 A. I have no idea.

5 **Q. So on page two the only time that any discharge**
6 **was found to be not within policy was an unintentional**
7 **or accidental shooting, right?**

8 A. Correct.

9 **Q. Same for page three?**

10 A. Correct.

11 **Q. And also same for page four, correct?**

12 A. Correct.

13 **Q. So in 2017 all of the intentional firearm**
14 **discharges were found to be within policy?**

15 A. A large number of the ones on your sheet are not
16 adjudicated, of the ones that are on this sheet,
17 correct, but I don't know about the ones that aren't on
18 the sheet.

19 **Q. Okay. Are these spreadsheets ever updated?**

20 A. I suspect that they have. I don't know for
21 sure.

22 **Q. Okay. For all of the spreadsheets that we've**
23 **looked at, you have no reason to believe that any of**
24 **them are inaccurate or incomplete other than where**
25 **they're missing an adjudication, right?**

1 A. Right.

2 MS. GELSOMINO: Okay. Let's take a
3 quick break.

4 - - - -

5 (Thereupon, an off-the-record discussion was held.)

6 - - - -

7 MS. GELSOMINO: So we're back.

8 BY MS. GELSOMINO:

9 Q. I'm going to move to ask you questions about the
10 investigation into the shooting of Tyree King. Okay?

11 A. Okay.

12 Q. So you told me at the beginning of this that you
13 reviewed the routing sheet, right?

14 A. Yes.

15 Q. So it's possible -- strike that. Did you have
16 any involvement in the investigation into the shooting
17 of Tyree King?

18 A. No.

19 Q. Or the review of the shooting of Tyree king?

20 A. No.

21 Q. At that time you were the chairperson, right?

22 A. At what time?

23 Q. The time of his shooting.

24 A. Yes.

25 Q. So what does that mean in terms of what you

1 would have done in regard to this review?

2 A. In regard to the review?

3 Q. Yes.

4 A. Nothing.

5 Q. How about in relation to the shooting at all?

6 A. In relation to the investigation of the
7 shooting?

8 Q. Yes.

9 A. Nothing.

10 Q. Okay. Did you ever personally review any of the
11 investigation?

12 A. No.

13 Q. Did you ever have any conversations with anyone
14 who did a review of the investigation?

15 A. Yes. I've had conversation with the people who
16 reviewed the investigation. Yes.

17 Q. Who?

18 A. Deputy Chief Richard Bash.

19 Q. Okay. Anyone else?

20 A. I don't know who all was involved in the review
21 of the investigation, so I don't know.

22 Q. Did you speak to Bash about this investigation?

23 A. No.

24 Q. Okay. Let me clarify my question. Have you
25 ever spoken to anyone who did review the investigation

1 of the shooting of Tyree King about that investigation
2 or that shooting?

3 A. No.

4 Q. Okay. I'm going to show you the routing sheet
5 for the shooting of Tyree King, which I will mark as
6 Exhibit 15.

7 - - - -

8 (Thereupon, Plaintiff's Exhibit 15 was marked for
9 identification.)

10 - - - -

11 BY MS. GELSOMINO:

12 Q. Is this the document that you reviewed before
13 the deposition?

14 A. Can you scroll to the other pages?

15 Q. I can.

16 A. Yes.

17 Q. Okay. Did the document that you reviewed in
18 anticipation of this deposition include any information,
19 any other pages or notes or anything like that?

20 A. No.

21 Q. So on this routing sheet, your name is at the
22 top. Why?

23 A. That would be done by the administrative
24 secretary. It comes out of my office, so it's being
25 sent from my office to the chain of command.

1 Q. Okay. So on this routing sheet does it indicate
2 anywhere what the recommendations of the board, the FRB
3 itself is?

4 A. No.

5 Q. Do the routing sheets ever?

6 A. No.

7 Q. So what are people reviewing? What's the chain
8 of command reviewing?

9 A. The entire package that was discussed earlier
10 and the board finding.

11 Q. And where is the board's finding described?

12 A. It's a separate sheet of paper or two that's
13 attached to the investigation.

14 Q. Okay. Did you, at any point during the pendency
15 of this investigation, review this routing sheet?

16 A. No.

17 Q. So FRB makes a finding while you're the
18 chairperson, right?

19 A. Yes.

20 Q. FRB makes a recommendation, and then this
21 routing sheet is sent out from your office to the chain
22 of command, right?

23 A. Yes.

24 Q. At the end of the chain of command review where
25 does this routing sheet and investigation itself end up?

1 A. It goes back to the secretary, Nancy.

2 Q. Okay.

3 A. Who then sends it to, I believe, Internal
4 Affairs for filing.

5 Q. So is Nancy the one who decides where it goes
6 next or do you, as the chairperson, make that
7 determination?

8 A. If it was found within policy by the chain of
9 command I would never personally see it.

10 Q. Okay. When was the first time that you looked
11 at this routing sheet?

12 A. Last Friday. Late last week. I forget. I took
13 a vacation day on Thursday, so I don't remember which
14 day it was.

15 Q. That's fine. Now, earlier you stated that you
16 actually received a phone call when the shooting of
17 Tyree King occurred?

18 A. Yes.

19 Q. Why?

20 A. Because the Firearms Review Board chairperson
21 received a phone call every time there's a firearms
22 discharge.

23 Q. Who called you?

24 A. The Communications Bureau.

25 Q. What did they tell you?

1 A. They just give basics. A shooting occurred,
2 where it occurred, and whether they had success in
3 notifying the review responder, the chair responder or
4 not.

5 Q. Do they give you any information about the
6 actual shooting?

7 A. Sometimes they will, but not necessarily. It
8 would be very basic because they would have very little
9 information.

10 Q. Did they in this case give you any information
11 about the shooting?

12 A. I don't recall.

13 Q. Okay. What did you do after you received that
14 phone call?

15 A. I may have texted the responder to make sure
16 that he or she was going, but I don't recall.

17 Q. Okay. Did you do anything else personally in
18 relation to the shooting of Tyree King at any point?

19 A. No.

20 Q. Okay. I'm going to show you now this document,
21 which we'll mark as Exhibit 16. Do you recognize this?

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 16 was marked for
24 identification.)

25 - - - -

1 A. Yes.

2 BY MS. GELSOMINO:

3 **Q. What is it?**

4 A. That's a memo from myself to the people who were
5 going to review a particular shooting, which shooting it
6 is, and direct them to make a finding and return it back
7 to my office.

8 **Q. So this is like a form letter essentially that**
9 **goes out every time?**

10 A. Yes.

11 **Q. Based on this can you tell me who the responder**
12 **was?**

13 A. I cannot. Although the writer would be the
14 responder under general purposes, but I don't know if
15 that's necessarily the case on this one.

16 **Q. And then looking at page two of this exhibit, do**
17 **you recognize this?**

18 A. Yes.

19 **Q. What is this?**

20 A. This is the response back from the board, the
21 three members of the board to whom it was assigned.

22 **Q. This is their recommendations, right?**

23 A. This is their finding, yes.

24 **Q. So the correct terminology is that the board**
25 **reviews it and then makes findings?**

1 A. It's the board's finding.

2 Q. I just want to make sure that I'm using the
3 right word for it.

4 A. They both get used.

5 Q. Okay. So in this case the board concluded that
6 the use of the firearm was intentional and not in
7 violation, right?

8 A. Correct.

9 Q. Did you ever review this document?

10 A. Not that I recall.

11 Q. So why is this sent to the chief of police?

12 A. It's not.

13 Q. Even though it's a memo to the chief of police?

14 A. Ninety-five percent of all memos in the division
15 of police are written with his or her name at the top
16 and never actually gets there.

17 Q. Did this finding of the FRB in relation to the
18 Tyree King shooting ever go to the chief of police?

19 A. I have no idea.

20 Q. Because the FRB and the board -- excuse me.
21 Because the board and chain of command agreed in this
22 case, who is the final policy maker, decision-maker in
23 relation to this investigation?

24 A. Deputy Chief Richard Bash.

25 Q. Okay. When was the first time that you saw

1 **this?**

2 A. Three minutes ago.

3 **Q. Okay. What factors led to the board's findings**
4 **in this case in relation to Tyree King?**

5 A. I have no idea.

6 **Q. Do you agree or disagree with the findings?**

7 A. I have no opinion on it.

8 **Q. Is it the position of the Columbus Division of**
9 **Police that the shooting of Tyree King was justified and**
10 **within policy?**

11 A. Not entirely.

12 **Q. Explain that to me, please.**

13 A. You used the word justified, and that's not the
14 terminology we used. The division's finding was that it
15 was intentional and not in violation of policy. That's
16 the division's position.

17 **Q. All right. I'm going to move on, then to**
18 **questions regarding the shooting of Deaunte Bell-McGrew.**
19 **Did you have any personal involvement in any**
20 **investigation or review into the shooting of Deaunte**
21 **Bell-McGrew?**

22 A. Yes.

23 **Q. What was that?**

24 A. I believe I was the Deputy Chief at the time of
25 the review.

1 **Q. That means you were part of the chain of command**
2 **review, right?**

3 A. Correct.

4 **Q. What do you know about the shooting of Deaunte**
5 **Bell-McGrew?**

6 A. I remember it occurring somewhere on the east
7 side, if I recall correctly. He was in the back seat of
8 a car that was stopped for a traffic violation, and I
9 believe Officer Narewski perhaps was the shooting
10 officer. I don't recall exactly if he was by himself or
11 a partner. And that's really all I remember.

12 MR. PHILLIPS: Sarah, not to get
13 complicated here, but in what capacity are you asking
14 him questions right now? Because technically there's
15 four separate depositions occurring simultaneously.
16 This is new for me. I'm not used to four depositions
17 occurring at once.

18 MS. GELSOMINO: Why don't I do his
19 personal involvement first, because I have a feel that
20 I'll get tripped up, and keep asking personal questions
21 if I don't get that out of the way first.

22 BY MS. GELSOMINO:

23 **Q. So, I'm asking you these questions regarding**
24 **your personal involvement and knowledge in relation to**
25 **the shooting of Deaunte Bell-McGrew, as opposed to**

1 asking you to give me binding testimony on behalf of the
2 city. Okay?

3 A. Okay.

4 Q. Then we'll switch. When did you first learn of
5 the shooting of Deaunte Bell-McGrew?

6 A. I don't recall.

7 Q. What is the first thing that you remember about
8 it?

9 A. I remember that I reviewed it because of this
10 deposition. I mean, I don't really have a distinct
11 memory of the first time that I learned of it.

12 Q. Okay. What was the -- let me just understand
13 this. Were you the chairperson of the FRB at the time?

14 A. I don't recall.

15 Q. So Deaunte Bell-McGrew was killed in October of
16 2015.

17 A. I believe I was the chairperson.

18 Q. Okay. Did you have anything to do with the
19 review done by the FRB into this shooting?

20 A. Similar to the Tyree King shooting, letters went
21 in and out of my office under my name, but again, the
22 board doesn't do investigations or have anything to do
23 with the investigation.

24 Q. I understand that. But the board reviews the
25 investigation, and in your capacity as the chairperson

1 of the board did you have anything to do with the review
2 of the investigation of Tyree King?

3 A. Of Tyree King?

4 Q. Excuse me. Deaunte Bell-McGrew.

5 A. Only in keeping it moving.

6 Q. Okay. So I'm going to show you -- do you
7 recognize this document?

8 A. Not by memory, but I know what it is.

9 Q. What it is?

10 A. It is the finding of the three members of the
11 firearms review board that reviewed this investigation.

12 Q. Okay. So I'm going to mark this as Exhibit 17.

13 - - - -

14 (Thereupon, Plaintiff's Exhibit 17 was marked for
15 identification.)

16 - - - -

17 BY MS. GELSOMINO:

18 Q. When was the first time that you saw this
19 document indicating the results or the findings of the
20 Firearms Review Board in this case?

21 A. Most likely when it reached my office in the
22 chain of command review.

23 Q. Okay. Do you know what the board relied upon to
24 come to this conclusion?

25 A. They rely on the investigation.

1 Q. Do you know what factors in the investigation
2 led them to come to this conclusion?

3 A. I have no idea.

4 Q. Did you ever have any conversation with any of
5 the officers who reviewed this shooting?

6 A. No.

7 Q. And then the second page of this Exhibit, this
8 June 8th, 2016 memo, that's similar to how you just
9 described this. Is it accurate to say this is the memo
10 that was sent by the secretary to assign the reviewers
11 of the FRB to look into the shooting of Deaunte
12 Bell-McGrew?

13 A. Yes.

14 Q. Okay. Again, I'm asking you this in your
15 personal capacity. When this investigation ended up on
16 your desk in the chain of command review, what did you
17 do?

18 A. I read the investigation. I reviewed all the
19 documentation. I would always look at photographs if
20 they're included, videos if they're included. I
21 consider the facts in this case and I make my finding.

22 Q. In this case what was your finding?

23 A. I found it intentional and not within violation
24 of policy.

25 Q. Why did you come to that conclusion?

1 A. Because the facts indicated that it was
2 intentional and not in violation of policy.

3 Q. What facts indicated that to you?

4 A. I don't recall specifically.

5 Q. As you sit here today, can you tell me any
6 specific facts that lead you to find the shooting to go
7 to be intentional and within policy?

8 A. As I recall the facts in this case as I remember
9 them today, I remember those officers were involved, and
10 the gentleman was in the back seat of a car, and that's
11 all I remember.

12 Q. Okay. I'm showing you what I'm going to mark as
13 Exhibit 18, which is the routing sheet for the shooting
14 of Deaunte Bell-McGrew, right?

15 A. Correct.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 18 was marked for
18 identification.)

19 - - - -

20 BY MS. GELSOMINO:

21 Q. You would have signed the routing sheet
22 somewhere, signed off on it, right?

23 A. Yes.

24 Q. Do you see any notation here that you signed off
25 on this document?

1 A. I notice there's two pages on this document and
2 I can't see the second page.

3 Q. I'll go to the second page. That's hard to see.

4 A. I see it. I do not see my name on this.

5 Q. But you recall signing off on it somewhere?

6 A. No. I do not recall signing off on it.

7 Q. Do you recall actually reviewing the
8 investigation into the shooting of Deaunte Bell-McGrew
9 as the deputy chief?

10 A. I don't recall specifically, no.

11 Q. What do you base your testimony today then that
12 you did so?

13 A. Just a general understanding that I would have
14 reviewed that case and had my findings on it.

15 Q. Okay. I'm going to ask you then, in your 30(b)6
16 capacity, what is the position of the Division of Police
17 for the City of Columbus as to why this shooting was
18 intentional and not in violation of the policy?

19 A. I don't know how to answer that.

20 Q. Why? Does it confuse you? What about it can't
21 you answer?

22 A. It confuses me.

23 Q. There was a finding that the chain of command
24 and the Firearms Review Board determined that this
25 shooting of Deaunte Bell-McGrew was not in violation of

1 policy and was intentional, correct?

2 A. Yes.

3 Q. Is that the position of the division of police?

4 A. Yes.

5 Q. What is the basis of that position of the
6 division of police?

7 A. I don't understand the question. Basis, I don't
8 recall that.

9 Q. What factors does the division of police believe
10 led to the decision that the shooting of Deaunte
11 Bell-McGrew was intentional and not in violation of
12 policy?

13 A. I don't know.

14 Q. Was any follow-up investigation requested by any
15 reviewing member?

16 A. Not that I recall.

17 Q. In this case in the shooting of Deaunte
18 Bell-McGrew you, as the deputy chief, were the final
19 decision-maker regarding whether or not the shooting was
20 in violation of policy, correct?

21 A. Yes.

22 Q. Did you ever bring this shooting up with the
23 chief?

24 A. Not that I recall.

25 Q. Would this shooting ever have reached the desk

1 **of the chief of police?**

2 A. Not under normal circumstances. The chief of
3 police can ask to see anything he or she wishes to see,
4 but I don't recall that.

5 MR. PHILLIPS: I'm going to object to
6 all of these specific questions being outside the scope
7 of this deposition, but you can go ahead and keep asking
8 them.

9 MS. GELSOMINO: You can answer.

10 A. I did.

11 BY MS. GELSOMINO:

12 **Q. What was the answer?**

13 A. That I don't believe it got to her by any normal
14 process, but she's the chief of police and can ask for
15 anything that she wants.

16 **Q. Oh, sorry. Did she, in this case, ask for**
17 **anything?**

18 A. I have no idea.

19 MS. GELSOMINO: Wes, what's the basis
20 of that objection?

21 MR. PHILLIPS: Outside the scope.

22 MS. GELSOMINO: How is it outside the
23 scope to ask about the investigation?

24 MR. PHILLIPS: If you look at the
25 wording of 7.)A, it's outside the scope of the wording

1 of 7.)A.

2 MS. GELSOMINO: I don't understand
3 that. I need more than that, because 7.)A is
4 specifically regarding investigation of the FRB.

5 MR. PHILLIPS: And he testified to
6 that. I mean, you can disagree, but my objection is
7 noted on the record. I object to it being outside the
8 scope of 7.)A.

9 MS. GELSOMINO: If I could somehow ask
10 a cleaner question that makes you comfortable, I will.

11 MR. PHILLIPS: Those specific
12 questions when you're getting now specific into the
13 FRB's review of this incident, that was not what was in
14 your Notice of Deposition, so it's outside of the scope.

15 MS. GELSOMINO: But what's in the
16 Notice of Deposition is all of the cases from 2005 to
17 present, which includes these specific cases, right?

18 MR. PHILLIPS: You can disagree, but
19 I'm just talking about the language of 30(b)6, and you
20 didn't state this with particularity. Like I said, I'm
21 letting him answer, but I'm objecting. I say it's
22 outside the scope. You can disagree, and the court can
23 either agree or disagree.

24 MS. GELSOMINO: That's fine.

25 BY MS. GELSOMINO:

1 Q. In your personal capacity in relation to the
2 shooting of Deaunte Bell-McGrew, are you aware of
3 whether the chief of police ever reviewed your findings?

4 A. I have no idea.

5 Q. Okay. You understand that in this case you were
6 the final policy maker, the final decision-maker, right?

7 A. Yes.

8 Q. All right. I'm going to move on to the shooting
9 of James England. Let's ask the questions, again, in
10 your personal capacity before we get to the 30(b)6
11 questions on behalf of the city.

12 A. Okay.

13 Q. What was your involvement in the review of the
14 shooting of James England?

15 A. I was the deputy chief at the time.

16 Q. So you were, once again, a chain of command
17 review, right?

18 A. Yes.

19 Q. And you were also -- he was shot in February of
20 2015, so at that time you were also the chairperson?

21 A. Yes.

22 Q. Okay. Were you involved at all in the FRB
23 review of the shooting of James England?

24 A. Only in the producing of the two documents that
25 we keep referencing.

1 Q. Okay. I'm going to show you this memo. That
2 was, again, generated from your office, right?

3 A. Yes.

4 Q. So we're going to mark this as Exhibit 19.

5 - - - -

6 (Thereupon, Plaintiff's Exhibit 19 was marked for
7 identification.)

8 - - - -

9 BY MS. GELSOMINO:

10 Q. This is your directive to the members of the FRB
11 to conduct a review, correct?

12 A. Yes.

13 Q. And why did you do this?

14 A. That's the standard practice for every
15 investigation made by the review board.

16 Q. How were you first notified of this shoot in
17 order to begin this process?

18 A. I don't recall.

19 Q. Do you get -- strike that. I understand that
20 your secretary does this, it's generated from your
21 office, but you don't fill out any of the information
22 yourself?

23 A. Right.

24 Q. Do you review this?

25 A. No.

1 Q. Do you, as the chairperson, even know that this
2 happened?

3 A. Sometimes.

4 Q. In this case did you know that this memo was
5 sent?

6 A. I don't recall.

7 Q. Okay. Did you give any other instructions or
8 orders other than what's in this memo?

9 A. No.

10 Q. Okay. Then you were not involved again at any
11 point in the FRB review, correct?

12 A. Right.

13 Q. Now, I'm going to show you this exhibit, which
14 was previously marked. So this was previously marked as
15 Abel Exhibit 8. What is this?

16 A. This was the board's finding. The reply to the
17 last document that you showed me.

18 Q. What is the finding of the board in the shooting
19 of James England?

20 A. The shooting was intentional and in violation of
21 policy.

22 Q. Do you know why the board found it this way?

23 A. I do not.

24 Q. Do you know any of the factors, the evidence
25 that led them to come to this conclusion?

1 A. I do not.

2 Q. Okay. Did you ever have any conversations with
3 any of the FRB members in relation to this case and
4 their findings?

5 A. Not that I recall.

6 Q. At some point you saw this document, right?

7 A. Yes.

8 Q. When was the first time that you saw this
9 document that contained the findings of the FRB?

10 A. I don't recall.

11 Q. Do you recall ever seeing it before the
12 investigation landed on your desk for a review in the
13 chain of command?

14 A. I do not recall specifically, but an in
15 violation of policy finding, it would not necessarily be
16 unusual for me to be notified of it.

17 Q. Before the chain of command's?

18 A. Correct.

19 Q. How would you typically be notified of it?

20 A. Usually by one of the board members, or by
21 Nancy, alerting me to an unusual case.

22 Q. Would that be in writing?

23 A. No.

24 Q. Why would they notify you?

25 A. Because as you went through the logs earlier,

1 it's out of the norm and usual. It's just an awareness
2 practice, I guess.

3 Q. Okay. Do you recall being notified of that in
4 this case?

5 A. I do not recall that.

6 Q. In preparation for this deposition did you make
7 any effort to refresh your recollection about what you
8 did in relation to this investigation?

9 A. No.

10 Q. Did you attempt to talk to any of the FRB
11 members who reviewed this case to refresh your
12 recollection?

13 A. No.

14 Q. You could have talked to any of these members of
15 the FRB review team to determine what they knew about
16 this investigation or their findings, right?

17 A. Yes.

18 Q. Do you recall anything else that you did before
19 this came to your desk in the chain of command review?

20 A. No.

21 Q. When you did review -- when this investigation
22 came to you there was that memo with just the findings,
23 correct?

24 A. Correct.

25 Q. Was there any other memo or information that you

1 reviewed that was generated by anyone within the chain
2 of command or on the FRB?

3 A. I believe a chain of command member wrote a
4 letter, one or more chain members wrote a letter to
5 justify their findings.

6 Q. What was the content of that letter?

7 A. I don't recall specifically.

8 Q. Did you review that letter?

9 A. I believe so.

10 Q. So when it came to your desk what were you
11 reviewing? You were the top of the chain of command,
12 right?

13 A. Uh-huh. Yes.

14 Q. What were you reviewing, to agree or disagree
15 with?

16 A. A completed CIRT investigation, the Firearms
17 Review Board findings, the chain of command
18 recommendations, and/or any documentation that the chain
19 of command produced.

20 Q. Was your job to agree or disagree with the FRB
21 findings?

22 A. I don't understand the question.

23 Q. What I'm trying to figure out is like was your
24 task to either agree or disagree with the FRB or the
25 chain of command findings?

1 A. My job was develop on my own the conclusion as
2 to whether the shooting was in violation of policy or
3 not.

4 **Q. And does that -- okay. Did you agree or**
5 **disagree with the findings of the FRB?**

6 A. So I know that this case got to Chief Jacobs,
7 which means either I agreed with the board or disagreed
8 with the board. If I agreed with the board it was
9 within violation of policy, or if I disagreed with the
10 board it would go to the chief. I don't recall my exact
11 finding. I believe I found it to be in violation of
12 policy. That's my recollection.

13 **Q. Based on what?**

14 A. I don't recall.

15 **Q. You don't recall why you found it to be in**
16 **violation of policy?**

17 A. No. I do not recall.

18 **Q. You could have reviewed your findings in this**
19 **case before you came here, right?**

20 A. I'm sorry. Was there a question?

21 **Q. Yeah. I'm asking you, is that correct?**

22 A. You're cutting out. I didn't hear the correct
23 part.

24 **Q. It is true that you could have reviewed your**
25 **findings in this case before you came here to testify**

1 **about this case today, right?**

2 A. Yes.

3 **Q. And you could have reviewed the entire CIRT**
4 **investigation, correct?**

5 A. Yes.

6 **Q. And you could have reviewed the chain of command**
7 **findings and memos, correct?**

8 A. Yes.

9 **Q. You could have reviewed the transcript of the**
10 **chief's hearing, correct?**

11 A. If there's a transcript, yes.

12 **Q. You knew that you were going to be deposed today**
13 **under oath regarding this investigation and your**
14 **involvement in it, correct?**

15 A. I understood that I was coming to speak to the
16 process of the board and how it operates.

17 **Q. And you understood that you were doing that**
18 **regarding how the board -- all of the investigations**
19 **that the board has conducted since 2005, right?**

20 A. I understood that I was to explain how the board
21 processes its investigations, its reviews and how the
22 board operates.

23 **Q. Did you understand that you were also called to**
24 **testify on the findings and outcomes and reviews of the**
25 **board since 2005?**

1 A. Yes.

2 **Q. And this shooting of James England is one of**
3 **those cases since 2005, right?**

4 A. Yes. So as we've discussed, the findings are
5 explained.

6 **Q. How?**

7 A. You asked me to review documents and confirm
8 that the documents say what they say, which is that it
9 was an intentional not in violation of policy. I can't
10 speak to what those folks considered or what was in
11 their mind, nor do I recall what was in my mind five
12 years ago when I read it. But I can tell you what the
13 findings are, and that's what I understood I was here to
14 do.

15 **Q. You were also noticed to give deposition**
16 **testimony specifically regarding your personal knowledge**
17 **as a fact witness in the shooting of each of these men,**
18 **right?**

19 A. I don't know.

20 MR. PHILLIPS: I object. The notice
21 doesn't say to each of these men. You noticed him to
22 testify in the case, and he's testifying to the best of
23 his recollection.

24 MS. GELSOMINO: I believe he was also
25 noticed as a fact witness in each of these cases in

1 addition to a 30(b)6 witness.

2 MR. PHILLIPS: Correct. And he
3 answered the question and said he doesn't remember.

4 BY MS. GELSOMINO:

5 Q. As you sit here today, you can't tell me any of
6 the factors that you considered in finding that the
7 shooting was outside of policy?

8 A. No.

9 Q. All right. I'm showing you what was previously
10 marked as Abel Exhibit 9. Do you recognize this?

11 A. Yes. I remember that. That's what I indicated
12 that I believed someone wrote additional documentation.

13 Q. Okay. Has this refreshed your recollection
14 about the factors that you relied upon to find that this
15 shooting of Mr. England was intentional and outside of
16 policy?

17 A. No. Just the generalities of it.

18 Q. Do you agree with the conclusions that Knight
19 sets forth in this memo?

20 A. I reviewed this memo in conjunction with the
21 entire investigative packet, picture, et cetera. So I
22 can't make those conclusions or decisions based on
23 individual documents, and that's how I would have made
24 the review five years ago, and I can't render a decision
25 on a shooting based on this letter.

1 Q. Do you agree that Abel's use of force of the
2 firearm was intentional and in violation of the policy?

3 A. The division's position is that it was not in
4 violation of policy ultimately.

5 Q. So when you first reviewed this investigation
6 including Knight's memo and issued your own conclusions
7 into your own conclusion in the course of your chain of
8 command review, did you agree with Knight's findings?

9 A. So I believe I answered that about 20 minutes
10 ago. I don't recall what my finding was. I know it
11 went to the chief of police, which means either I
12 disagreed with the board, or I found it in violation,
13 but I just don't recall which one of two it was.

14 Q. Okay. I'm showing you what was previously
15 marked as Knight Exhibit 16. Does this refresh your
16 recollection as to what your conclusions were in the
17 chain of command review?

18 A. It does not.

19 Q. What is this document?

20 A. This looks to be a continuation of a routing
21 sheet from before.

22 Q. What do you mean "from before"?

23 A. You showed me another routing sheet on this case
24 just a few moments ago, I believe.

25 Q. Okay. Is this your handwriting on this page on

1 **the top?**

2 A. Yes.

3 **Q. Where it says your name. What did you write**
4 **below this?**

5 A. "Discussed with Chief Jacobs departmental
6 charges rule of conduct 120."

7 **Q. What's rule of conduct 120?**

8 A. I believe it's use of firearm.

9 **Q. What does this mean?**

10 A. What does what mean?

11 **Q. What you wrote here?**

12 A. It means -- it's self-evident. I had a
13 conversation with Chief Jacobs, and then departmental
14 charges for violation rule of conduct 120 were approved
15 by her.

16 **Q. So she's the one who had to approve the charges,**
17 **right?**

18 A. Correct. We discussed that earlier that only
19 the chief can approve departmental charges.

20 **Q. So did you present her -- did you request that**
21 **she approve departmental charges?**

22 A. I don't recall if I did or not.

23 **Q. Why did she approve the departmental charges?**

24 A. I don't know.

25 **Q. Was this an in-person conversation?**

1 A. Yes.

2 Q. Where were you?

3 A. I don't recall.

4 Q. How long did the conversation last?

5 A. I don't know.

6 Q. Do you recall anything about it whatsoever?

7 A. I'm sorry. I do not.

8 Q. Why would you have had this conversation with
9 Chief Jacobs?

10 A. That's what leads me to believe that I likely
11 disagreed with the board, so we had conversation with
12 the chief since she would be the final decision-maker on
13 that, but I don't recall what my finding was. That
14 seems to be the most plausible explanation.

15 Q. At any other point have you ever discussed
16 departmental charges with Chief Jacobs for any other
17 case?

18 A. Yes.

19 Q. Do you recall which case that is?

20 A. Every case I've ever had departmental charges
21 filed on somebody would have come after a discussion
22 with Chief Jacobs. There's no bureaucratic way to get
23 that done without that conversation occurring.

24 Q. How many times have you been a part of getting
25 departmental charges approved?

1 A. Probably several dozen.

2 Q. Now, we just went through all of the discipline
3 in all of those logs. Were the several dozen attempts
4 to get charges approved included in any of those logs?

5 A. No.

6 Q. Why not?

7 A. Because they weren't departmental charges cases.

8 Q. So you didn't get the charges that you
9 requested?

10 A. That log refers to only firearm discharges. You
11 asked me if I ever had discussions about departmental
12 charges. I said several dozen. There are lots of
13 reasons why somebody may be departmentally charged
14 beyond the use of deadly force.

15 Q. So in relation to the use of deadly force how
16 many times have you discussed bringing departmental
17 charges with the chief?

18 A. Maybe two or three, I believe.

19 Q. Other than James England, what are those other
20 cases?

21 A. Billy Camp-Donavon, that was discussed earlier,
22 The Poehler case that was discussed earlier. And just
23 leaving one or two out there, those are the two that
24 come to mind.

25 Q. What was the second one? Refresh my

1 **recollection.**

2 A. Eric Poehler, who fired a shotgun in a
3 substation and didn't use the bullet trap.

4 **Q. Okay. Thank you. Can you read the second**
5 **square that's completed here for me?**

6 A. You'll need to below it up. "Forward to
7 discipline grievance lieutenant." Looks like it went to
8 Lieutenant Lokai, 5054, assignment, Professional
9 Standards Bureau, acronym, PSB. "Remarks, case
10 reviewed. Discussed case with DC Kuebler. Draft of
11 charges complete for Chief Jacobs for approval. Forward
12 to IAB for storage."

13 **Q. That is all -- what's the lieutenant's name?**

14 A. Lokai. L-O-K-A-I.

15 **Q. So all of that in that box is written in Lokai's**
16 **handwriting, correct?**

17 A. The discipline grievance Lieutenant PSB would
18 have been mine, but the remarks are his handwriting.

19 **Q. Tell me about the discussion that you had with**
20 **Lokai.**

21 A. I don't recall it. That would be a perfunctory
22 brief conversation. I reviewed the case. Other cases
23 similar to it would have been departmental charges.
24 There's just cause for it, and that's it. It will be a
25 very routine conversation.

1 Q. Okay. Did you review the draft charges?

2 A. Probably, but I don't recall specifically.

3 Q. Okay. I'm going to move to page two of this
4 document. Does this refresh your recollection as to
5 your conclusions regarding your review of this shooting
6 of James England?

7 A. It does.

8 Q. Tell me what your findings were.

9 A. It says "the use of firearm was intentional and
10 in violation of policy. Return to Sergeant Griffis for
11 discipline recommendation." This is what I suspect was
12 an additional piece the routing sheet in between the
13 first and third one.

14 Q. Okay. So you're the top of the chain of command
15 review here, right? You find this to be intentional and
16 in violation of policy. So why would you mark it to go
17 back to sergeant for discipline recommendation? Why
18 don't you make the disciplinary recommendation?

19 A. The Fraternal Order Of Police Contract puts the
20 discipline on the immediate supervisor. It gets
21 returned to the chain of command to the immediate
22 supervisor to prepare a disciplinary recommendation.

23 Q. Before coming to your conclusion that the use of
24 force in this case was intentional and in violation of
25 policy, did you review Sergeant Griffis' memos

1 **disagreeing with the finding of the FRB?**

2 A. I believe so, yes.

3 **Q. But even knowing his position on this you still**
4 **found it to be in violation of policy?**

5 A. Yes.

6 **Q. Why?**

7 A. I don't remember the specifics as to why I found
8 it in violation of policy.

9 **Q. Did you ever have a conversation with him**
10 **regarding his position in this case?**

11 A. Not that I recall.

12 **Q. Did you ever have a conversation with Knight**
13 **regarding his position in this case?**

14 A. Not that I recall.

15 **Q. In the course of your review of the shooting of**
16 **James England, did you listen to the interview of**
17 **Officer Abel?**

18 A. I don't believe so.

19 **Q. Did you read the transcript of the interview?**

20 A. That's how I usually would do it.

21 **Q. So you knew what he stated in the interview,**
22 **right?**

23 A. Correct.

24 **Q. Okay. Did you review the interview of Fulwider?**

25 A. Yes.

1 Q. Did you review the interview of Dungey?

2 A. If it was in the investigation, yes.

3 Q. Did you review everything that was included in
4 the CIRT investigation?

5 A. I always made it my practice to review
6 everything.

7 Q. It seems like it. Okay. Before you came to
8 your conclusion did you talk to -- I apologize if I
9 asked you this. Did you talk to any of the reviewers
10 from the FRB?

11 A. No, I did not.

12 Q. And before you came to your own conclusions
13 regarding the shooting of England, did you talk to
14 Gardner?

15 A. I don't recall. If I would have had a
16 conversation with the chain it would have been Gardner,
17 but I don't recall.

18 Q. Okay. What, if any, discipline did Griffis
19 recommend after you sent it back to him for
20 recommendation?

21 A. I don't recall.

22 Q. What happened after he reviewed it for a
23 recommendation?

24 A. I believe he crafted another letter in response.

25 Q. Did you review that letter?

1 A. I would have, yes.

2 Q. Did it change your conclusions at all regarding
3 your finding that the shooting was intentional and not
4 within policy?

5 A. No.

6 Q. Okay. So just walk me through the logistics
7 here. It went up to you, you sent it back to Griffis,
8 and he wrote another letter. Where did it go next?

9 A. His lieutenant.

10 Q. Knight?

11 A. Correct.

12 Q. And Knight is the one who then recommended
13 progressive discipline?

14 A. I don't believe he recommended processive
15 discipline. I think he recommended bypassing
16 progressive discipline.

17 Q. That's what I meant. That's what he did
18 recommend, right?

19 A. I believe so.

20 Q. Did you agree with Knight's recommendation to
21 bypass progressive discipline in this case?

22 A. Apparently, yes.

23 Q. When you say, "apparently, yes," what do you
24 mean?

25 A. I don't remember it, but you showed me a

1 document a little bit and that said the departmental
2 charges are approved and I had come to that conclusion
3 earlier.

4 Q. Okay. Was there any backlash in the chain of
5 command regarding Knight's findings in the disciplinary
6 recommendation?

7 A. No.

8 Q. Was this disciplinary recommendation by Knight
9 to bypass progressive discipline a typical
10 recommendation?

11 A. Yes.

12 Q. How so?

13 A. The vast majority of intentional shootings
14 against suspects, we went through those documents
15 before, result in charges.

16 Q. If they're found to be outside of policy?

17 A. That's what I said, yes. Charges outside of
18 policy shootings would result in departmental charges.

19 Q. Got it. It's just that most of the intentional
20 shootings are not found to be outside of policy, right?

21 A. That's correct.

22 Q. There were additional officers on the scene when
23 Abel shot James England, right?

24 A. I'm sorry.

25 Q. There were other officers aside from Abel on the

1 **scene when Abel shot James England, right?**

2 A. I believe so.

3 **Q. And none of those officers sought fit to shoot**
4 **him?**

5 A. None of those officers shot at him. I don't
6 know what they sought fit to do.

7 **Q. Did any of the other officers who were on the**
8 **scene ever come forward to say that they thought the**
9 **shooting was unjustified?**

10 A. Not that I'm aware of.

11 **Q. Did any of those other officers, Griffis,**
12 **Fulwider, or Dungey, ever come forward to say that Abel**
13 **shot his firearm in the absence of the threat of death**
14 **or serious physical harm?**

15 A. Not that I recall.

16 **Q. They ultimately backed Abel's story, right?**

17 A. I don't understand the question. Backed his
18 story?

19 **Q. Did they agree with Abel's story about the**
20 **shooting?**

21 A. I can't characterize it as that.

22 **Q. Why not?**

23 A. They were asked to give a statement and they
24 gave a statement. They gave their story. They didn't
25 reference his story.

1 Q. Was any part of the statement of Griffis,
2 Fulwider, Dungey, in contradiction to Abel's story?

3 A. I have no idea.

4 Q. You reviewed all of those though, right?

5 A. I did.

6 Q. Did any of their testimony or statements in this
7 case impact the finding that this shoot was intentional
8 and outside of policy?

9 A. I don't recall.

10 Q. It's typically in investigations of officer
11 involved shootings within the CPD for other officers on
12 the scene to not contradict the shooter regarding
13 justifications, right?

14 MR. PHILLIPS: Objection. Go ahead.

15 A. I don't understand typical.

16 BY MS. GELSOMINO:

17 Q. Have you ever in your experience known of a CPD
18 officer who contradicted a shooting officer's testimony
19 regarding the justification of the gunshots?

20 A. I have read very few investigations whereby the
21 officers give the same story.

22 Q. Specifically though I'm talking about whether or
23 not those other officers contradicted the justifications
24 of the shooting.

25 MR. PHILLIPS: Objection. You can go

1 ahead and answer.

2 A. The officers don't justify or not justify a
3 shooting. They gave a statement as to what they saw,
4 and the chain of command and the review board make the
5 determination whether it's in policy or not. It's not
6 an officer's position nor do they do that. They give a
7 statement as to what happened.

8 BY MS. GELSOMINO:

9 **Q. Have you ever heard of any officer coming**
10 **forward to say that they were on the scene of a shooting**
11 **that they believed to be unjustified or unnecessary?**

12 MR. PHILLIPS: Objection. You can and
13 answer.

14 A. Yes.

15 BY MS. GELSOMINO:

16 **Q. When?**

17 A. I recently heard Lieutenant McFadden
18 contradicting some information regarding the Tyree King
19 case publicly.

20 **Q. Explain that to me.**

21 A. I recently heard Lieutenant McFadden, a division
22 of police lieutenant, who claims to have been at or near
23 the scene of Tyree King, made comments that, I believe,
24 she finds that to be a not justified shooting. She
25 indicated she didn't think it was a justified shooting

1 and made public statements to that effect, and I think
2 there's a contradiction of that.

3 **Q. Okay. When did you hear these statements?**

4 A. Within the last several weeks.

5 **Q. Have you talked to McFadden about them directly?**

6 A. I have not.

7 **Q. How did you hear them?**

8 A. I watched them on a video, or a podcast type of
9 video.

10 **Q. Which video?**

11 A. I don't recall. It was either a Facebook one
12 she did recently or some similar type interview that she
13 did.

14 **Q. Okay. What was -- why did she say that that
15 shooting was unjustified?**

16 A. I don't recall.

17 **Q. Do you recall anything else about her
18 statements?**

19 A. No.

20 **Q. Okay. Other than those recent statements from
21 McFadden, have you ever heard any officer within the CPD
22 come forward to say they were on the scene of a firearms
23 discharge that they believed to be unnecessary or
24 unjustified?**

25 A. Not that I recall.

1 **Q. How do you define the code of silence?**

2 MR. PHILLIPS: Objection. You can go
3 ahead and answer.

4 A. I don't know what you're referring to.

5 BY MS. GELSOMINO:

6 **Q. Have you ever heard the phrase code of silence?**

7 A. I've heard the phrase. I have no idea what it
8 means.

9 **Q. As you sit here today, with all of your**
10 **experience within the police department, can you tell me**
11 **any idea that you have about what the code of silence**
12 **could mean?**

13 MR. PHILLIPS: Objection. Go ahead
14 and answer.

15 A. I don't know what the code of silence means. It
16 means nothing to me.

17 BY MS. GELSOMINO:

18 **Q. Do you know what other people mean when they say**
19 **it?**

20 A. I do not know what other people mean, no.

21 **Q. Have you -- in 2016 Officer Abel faced a**
22 **disciplinary hearing. Are you aware of that?**

23 A. Yes.

24 **Q. What do you know about that?**

25 A. I sat in on the disciplinary hearing.

1 Q. Okay. Who else was there?

2 A. The chief, probably some folks from the
3 Professional Standards Bureau, Officer Abel, either his
4 attorneys or his FOP representatives. I don't recall
5 who else.

6 Q. Who presented at that?

7 A. Officer Abel primarily.

8 Q. Did Officer Abel speak for himself or through
9 his lawyer?

10 A. I believe Officer Abel spoke himself.

11 Q. Did you say anything in that hearing?

12 A. Yes.

13 Q. Have you ever reviewed the transcript of that
14 hearing?

15 A. No.

16 Q. Okay. I'm showing you the transcript of that
17 disciplinary hearing that we'll mark as 20.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 20 was marked for
20 identification.)

21 - - - -

22 BY MS. GELSOMINO:

23 Q. Let me scroll ahead. See here where it says,
24 "DC"?

25 A. Yes.

1 Q. Do you know who that is?

2 A. That's me.

3 Q. How long did the hearing last?

4 A. I don't recall. Maybe 30 minutes, 40 minutes.

5 Q. Okay. And after that hearing did you have any
6 discussions with anyone who was present?

7 A. Yes.

8 Q. Who?

9 A. Certainly the chief. I believe the disciplinary
10 grievance lieutenants. Everybody from his side, if you
11 will, would have been excused.

12 Q. Okay. What was the content of that
13 conversation?

14 A. I don't recall specifically, but I recall that
15 Chief Jacobs seemed to be inclined to find the shooting
16 not in violation of policy.

17 Q. Based on what?

18 A. I don't recall.

19 Q. Do you recall anything that led her to come to
20 that conclusion?

21 A. Something that had to do with the handcuffing
22 and the handcuffs and where they were on the suspect or
23 how they were attached, but I don't remember the
24 specifics.

25 Q. Was there anything that you heard in that

1 hearing that changed your perspective about whether the
2 shooting was intentional and not within policy?

3 A. Not that I recall.

4 Q. As you sit here today, is it still your position
5 that the shooting of James England by Officer Abel was
6 intentional and not within policy?

7 A. No.

8 Q. Why?

9 A. Because the chief is the final decider and I
10 work for the chief of police. The chief made a decision
11 and I carry out those decisions as if they are my own.

12 Q. I understand that. But did you ever change your
13 own mind about the conclusions that you made in this
14 investigation that the shooting was intentional and not
15 within policy?

16 A. Not that I recall.

17 Q. Okay. Did you believe that England was
18 handcuffed before the shooting?

19 A. I don't remember.

20 Q. Okay. I'm going to show you what was previously
21 marked as Knight Exhibit 18. This is an e-mail from
22 Lokai to a number of people including you, right?

23 A. Yes.

24 Q. Do you recall receiving this e-mail?

25 A. I do not.

1 Q. Before you received this e-mail were you aware
2 that the chief had overturned the findings of the chain
3 of command and the FRB?

4 A. I believe so.

5 Q. Do you believe that the chief was correct in
6 doing so?

7 A. Yes.

8 Q. Why?

9 A. Because the chief is the ultimate decision-maker
10 and this is the decision that people can disagree with,
11 so it's not a right or wrong, it's an executive
12 decision.

13 Q. Okay. Did you agree or disagree with the
14 findings of the chief in this case?

15 A. Again, the chief makes a decision. I agree with
16 her decisions.

17 Q. I understand that you'll implement her
18 decisions, but do you agree with this one in particular?

19 A. I don't remember changing my mind.

20 Q. Okay. Now, this e-mail says, "Mike, Bela, Eric,
21 Nancy, Miranda, will you please have someone amend your
22 records to reflect that Officer Abel's shooting was
23 found to be 'intentional and not in violation of
24 policy.'" Who are those people and what records would
25 they have?

1 A. Mike and Bela were the Internal Affairs Bureau
2 lieutenants at the time, so they would have had a record
3 of the finding of in violation of policy. Nancy
4 Cameron, as we discussed before, is the Firearms Review
5 Board administrative secretary. Eric Pilya is the head
6 of the CIRT investigating team, and Miranda Vollmer at
7 the time was the human resources manager for the
8 division of police and would have had to update
9 personnel records.

10 **Q. Okay. Why would those records be amended?**

11 A. The records would have reflected a finding that
12 would have changed. It was updated to reflect the
13 current finding.

14 **Q. Okay. I'm going to show you this document,**
15 **which I'm going to mark as 21.**

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 21 was marked for
18 identification.)

19 - - - -

20 BY MS. GELSOMINO:

21 **Q. Have you ever seen this before?**

22 A. Yes.

23 **Q. What is this?**

24 A. This is a letter from Chief Jacobs explaining
25 her ultimate decision.

1 **Q. When did you review this?**

2 A. I don't recall specifically. I believe she gave
3 me a copy of it, but I don't recall.

4 **Q. Were you surprised that Chief Jacobs disagreed**
5 **with the chain of command and FRB in this case?**

6 A. Maybe a little.

7 **Q. Why?**

8 A. Chief Jacobs was certainly one that I would
9 characterize as having hesitancy to use force or to
10 support force, so this was a case where she supported an
11 officer's use of force, and contrary to a lot of other
12 people, it seemed to be a little bit out of the norm for
13 her.

14 **Q. Okay. You don't know why she did that?**

15 A. No. I mean, other than what's written here I
16 don't know.

17 **Q. Okay. So, I just want to make sure I understand**
18 **this. This case went to Chief Jacobs, even though there**
19 **was no disagreement between the chain of command and FRB**
20 **because she had to make -- well, why? Can you just**
21 **explain to me why she would have reviewed this case even**
22 **though there was an agreement between the chain of**
23 **command and the FRB?**

24 A. Because Officer Abel was departmentally charged
25 so she had to hold a hearing.

1 **Q. Okay.**

2 MS. GELSOMINO: I think I want to take
3 a quick break to review my notes and we can wrap up.

4 MR. PHILLIPS: Sure.

5 MS. GELSOMINO: Thank you.

6 - - - -

7 (Thereupon, an off-the-record discussion was held.)

8 - - - -

9 BY MS. GELSOMINO:

10 **Q. As a police officer, Office Abel had a duty not**
11 **to use more force than necessary under the**
12 **circumstances, right?**

13 MR. PHILLIPS: Objection. Go ahead.

14 A. Yes.

15 BY MS. GELSOMINO:

16 **Q. And he had that duty while he was interacting**
17 **with Mr. England?**

18 MR. PHILLIPS: Objection. Go ahead
19 and answer.

20 A. Yes.

21 BY MS. GELSOMINO:

22 **Q. As a police officer, Abel had a duty not to**
23 **shoot a person who did not present an imminent threat of**
24 **death or physical harm to himself or anyone else,**
25 **correct?**

1 MR. PHILLIPS: Objection. You can
2 answer.

3 A. As reviewed through the lens of a reasonable
4 officer, that's correct.

5 BY MS. GELSOMINO:

6 Q. Okay. A police officer is not permitted either
7 by policy or under the law to shoot a person just
8 because they're engaging in passive resistance, right?

9 MR. PHILLIPS: Objection. You can
10 answer.

11 A. Generally, no.

12 BY MS. GELSOMINO:

13 Q. Is there ever a time where a police officer
14 would be justified in shooting a person who was engaging
15 in passive resistance?

16 MR. PHILLIPS: Objection. You can
17 answer.

18 A. The terminology is -- what an attorney or third
19 party reviewer considers as passive resistance and what
20 a reasonable police officer considers resistance, that
21 terminology isn't defined, it's not specific, and can be
22 used to argue what level of resistance was being
23 offered, so I can't necessarily answer that question.

24 BY MS. GELSOMINO:

25 Q. Pursuant to the policies of division of police

1 is passive resistance as defined by the policies a basis
2 to use deadly force?

3 A. No.

4 Q. Okay. A police officer is not permitted by
5 policies or under the law to shoot a person because they
6 ran away from that officer, correct?

7 MR. PHILLIPS: Objection. Calls for a
8 legal conclusion. You can answer.

9 A. That's not correct.

10 BY MS. GELSOMINO:

11 Q. How so?

12 A. If the person presents a deadly risk to others,
13 the fleeing in and of itself can justify the use of
14 deadly force.

15 Q. That makes sense. But in that case they would
16 have to be presenting a threat of death or serious
17 physical harm to another person while they were running
18 away to justify use of force, correct?

19 A. Yes.

20 Q. A police officer is not permitted to shoot a
21 person because they can't lift them off the ground,
22 right?

23 MR. PHILLIPS: Objection. You can
24 answer.

25 A. Can you repeat the question?

1 BY MS. GELSOMINO:

2 Q. Sure. A police officer is not permitted to
3 shoot a person just because that police officer is
4 unable to lift the person off the ground, right?

5 MR. PHILLIPS: Objection. You can
6 answer.

7 A. Presuming it's a hypothetical, I can't answer.

8 BY MS. GELSOMINO:

9 Q. A police officer is not permitted to shoot
10 someone simply because a person has a history of
11 criminal convictions, right?

12 MR. PHILLIPS: Objection. You can
13 answer.

14 A. I don't understand the phraseology, but just
15 because, no.

16 BY MS. GELSOMINO:

17 Q. Have you ever heard any division, Columbus
18 Division of Police officer make a joke about the use of
19 force?

20 A. Generally, yes, but not specifically.

21 Q. What do you mean by that?

22 A. Every profession people make jokes about their
23 own profession. Off color jokes are made, but I can't
24 think of one specifically.

25 Q. No examples whatsoever?

1 A. No.

2 **Q. How often do you hear those jokes?**

3 A. Infrequently.

4 **Q. Have you ever made any?**

5 A. Not that I recall.

6 **Q. Why not?**

7 A. I don't know.

8 **Q. Do you think they're funny?**

9 A. I can't think of any specific things so I can't
10 determine the level of funny.

11 **Q. Do you think it's appropriate to make jokes**
12 **about the use of force?**

13 MR. PHILLIPS: Objection. You can
14 answer.

15 A. I have no opinion on it one way or the other.

16 BY MS. GELSOMINO:

17 **Q. Have you ever heard any division of police**
18 **officers make comments based on race?**

19 A. No. I take that back. Yes.

20 **Q. Tell me about it.**

21 A. Lieutenant McFadden keeps indicating that things
22 are occurring based on race, so she makes race based
23 comments frequently. That's been in the news a lot and
24 I've seen those online, heard them in the news. So I'm
25 aware of her doing that.

1 Q. So other than Lieutenant McFadden making race
2 based claims about the division of police have you heard
3 any other officer make any kind of comment that was race
4 based?

5 A. Not personally, no.

6 Q. Have you ever heard of it?

7 A. Yes.

8 Q. Tell me about it.

9 A. Sergeant Eric Moore is accused to have done
10 that.

11 Q. What kind of comments?

12 MR. PHILLIPS: Objection. Irrelevant,
13 but go ahead and answer.

14 A. He's alleged to have made some comments about
15 referring to African Americans as monkeys. I believe.
16 I did not read the case. I read the news stories about
17 it.

18 BY MS. GELSOMINO:

19 Q. Have you talked to him about it?

20 A. I wouldn't even recognize him. I have no idea
21 who is he.

22 Q. Okay. Do you know whether or not he's been
23 disciplined?

24 A. Has he been disciplined? Yes.

25 Q. How many times have you heard a division of

1 **police officer report another officer for excessive or**
2 **unnecessary force?**

3 A. None that I can think of.

4 **Q. Other than the case of James England, have you**
5 **ever heard of any officer who was not disciplined when**
6 **you believed that they should have been?**

7 MR. PHILLIPS: Objection. You can
8 answer.

9 A. I can't think of anything specific. I can think
10 of times when I thought people should have been
11 disciplined more harshly than they should have been
12 disciplined.

13 BY MS. GELSOMINO:

14 **Q. Like when?**

15 A. There were two sergeants that were accused of
16 stealing time a while back and I was on that case and I
17 recommended that they be demoted or terminated.

18 **Q. What were they actually disciplined?**

19 A. They were suspended for six weeks.

20 **Q. Okay. Any other times?**

21 A. Not that I can recall.

22 MS. GELSOMINO: Okay. That's all that
23 I have for you today.

24 MR. PHILLIPS: Great. He'll read. If
25 you order, we'll get a copy.

STATE OF OHIO,
CUYAHOGA COUNTY.

I, Megan A. Medved, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DEPUTY CHIEF KENNETH KUEBLER, was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to Stenotype in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee of or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney of any of the parties in the above-captioned action; I am not financially interested in the action; and I am not, nor is the court reporting

1 firm with which I am affiliated, under a contract as
2 defined in Civil Rule 28(D).

3
4 IN WITNESS HEREOF, I have hereunto set my hand and
5 affixed my seal of office at Cleveland, Ohio on December
6 11th, 2020.

7
8
9 *Megan Medved*

10
11 _____
12 Megan A. Medved, a Notary Public

13 in and for the State of Ohio.

14 My Commission expires 9/17/23
15
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